

BILL NO. G-74-07-45 (AS AMENDED)

GENERAL ORDINANCE NO. G- 23-75

AN ORDINANCE amending Articles I, II, III, IV, and V
of Chapter 12 of the Municipal Code of the City of
Fort Wayne, Indiana, 1946

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
WAYNE, INDIANA:

That Article I, II, III, IV, and V of Chapter 12 of the Municipal Code of
the City of Fort Wayne, Indiana 1946 be repealed and in lieu of, and in substitution
thereof be enacted the following, to-wit:

SECTION 1. Definitions. The following definitions shall apply in the
interpretation and enforcement of this Ordinance.

- (a) "Food Service Establishment:" Said term shall include, but not necessarily be limited to, a restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain, commissary, drive-in restaurant or drink establishment, snack bar, food counter, dining room, food catering, industrial feeding establishment, private, public, or nonprofit organization or institution routinely serving food, and any other eating or drinking establishment where food or drink is prepared, served, or provided ^{for} human consumption with or without charge whether fixed or movable.
- (b) "Temporary Food Service Establishment:" Said term shall mean any food service facility operating for a period of time not in excess of two (2) consecutive calendar weeks, in connection with a fair, carnival, circus, public exhibition, or any other gathering at any impermanent location, whether or not the facility is fixed or movable.
- (c) "Mobile Food Service Establishment:" Said term shall mean any food-serving facility capable of being readily moved from location to location; one without a fixed location.
- (d) "Food Market:" Said term shall include, but not necessarily be limited to, grocery, meat market, poultry market, fish market, fresh fruit and vegetable market, delicatessen, confectionery, candy kitchen, nut store, retail bakery store, or any other establishment, whether fixed or movable, where food, intended for human consumption off the premises, is manufactured, produced, stored, prepared, handled, sold or offered for sale at retail or wholesale. Provided, however, that the provisions of this ordinance shall not include meat or poultry slaughterhouses.
- (e) "Temporary food Market:" Said terms shall mean any enclosure, stall or other facility, whether fixed or mobile, operating on a

APPROVED AS TO FORM
AND LEGALITY, 8-12-75.
James P. Logan
CITY ATTORNEY

seasonal basis for one or more days and not to exceed six (6) consecutive calendar months, where only fresh fruits and vegetables intended for human consumption off the premises are offered for sale at retail or wholesale.

- (f) "Food or Beverage Vending Machine:" Said term shall mean any self-service device offered for public use which, upon insertion of paper money, coins or tokens, or by other similar means, dispenses unit servings of food or beverages, either in bulk or in package.
- (g) "Machine Location:" Said term shall include, but not necessarily be limited to, any room, enclosure, space or area where one or more food or beverage vending machines are installed and operated.
- (h) "Commissary:" Said term shall include, but not necessarily be limited to, any place in which food, beverages, food or beverage ingredients, containers, or supplies are kept, handled, prepared or stored for the purpose of directly supplying food or beverage vending machines.
- (i) "Food:" Said term shall include, but not necessarily be limited to all raw, cooked or processed edible substances which may be used in whole or in part for human consumption, whether solid or liquid, packaged or unpackaged, confectionery, or condiment, whether simple, mixed or compound, and all substances and ingredients used in the preparation thereof or which become components thereof.
- (j) "Readily Perishable Food:" The term "readily perishable food" shall mean any food, as defined in this section, which consists in whole or in part of milk, milk products, eggs, meat, fish, poultry, or other food capable of supporting rapid and progressive growth of microorganisms which can cause infection or intoxication; provided, however, products in hermetically sealed containers processed by heat or other methods approved by the Health Officer to prevent spoilage, and dehydrated, dry or powered products so low in moisture content as to preclude development of microorganisms are excluded from the terms of this definition.
- (k) "Utensil:" Said term shall mean all containers or any equipment of any kind or nature, including, but not necessarily limited to any kitchenware, tableware, glassware, or cutlery, with which food may come into contact during storage, preparation, serving, or eating, or any and all apparatus, machinery or tools which may be used for the cleaning of said containers or equipment.
- (l) "Vending Operator:" Said term shall include, but not necessarily

be limited to any person who by contract, agreement, or ownership, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more vending machines.

- (m) "Food Handler:" Said term shall include, but not necessarily be limited to any person who may come into contact with food during exposure by sale, processing, preparation, packaging, serving, or who comes in contact with any utensil or equipment of any kind, during any said exposure, or who is employed in a room or rooms in which food is being processed, prepared, packaged, served, or sold.
- (n) "Health Officer:" Said term shall mean the Director of Public Health of the Fort Wayne, Allen County Department of Public Health in Allen County, Indiana, or his authorized representative.
- (o) "Board of Public Health:" Said term shall mean the Board Membership of the Fort Wayne, Allen County Department of Public Health of Fort Wayne, Allen County, Indiana.
- (p) "Department of Public Health:" Said term shall mean the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana.
- (q) "Person:" Said term shall include, but not necessarily be limited to a corporation, firm, partnership, proprietorship, association, business organization, or any other group acting as a unit, as well as an individual, trust or estate, or the agent or legal representative thereof.

SECTION 2. (a) Permit Requirements. It shall be unlawful for any person to operate a food service establishment, a temporary food service establishment, a mobile food service establishment, a food market, a temporary food market, or to act, whether actually or ostensibly, as a vending operator in Allen County, Indiana, who does not possess a valid permit for each such operation from the Health Officer; provided however, the provisions of this ordinance shall not apply to fruit and vegetable stands maintained and operated by a person who sells direct to consumers, fresh fruits or vegetables, obtained therefrom, grown and sold on land owned or controlled by him. Such permit shall be posted in a conspicuous place in each such food service establishment, temporary food service establishment, food market or temporary food market. With respect to mobile food service establishment, a permit number of size and style approved by the Health Officer, but in not less than one half (1/2) inch, bold-faced, capital lettered print, shall be conspicuously displayed on each vehicle. Any vending operator's permit number, of a size and style approved by the Health Officer, shall be conspicuously displayed on each vending machine operated, maintained or supplied by such operator.

- (1) Only persons who comply with the applicable provisions of this

Ordinance shall be entitled to receive and retain such a permit.

- (2) The permit for a food service establishment, mobile food service establishment, food market and vending operator shall be for a term of one year beginning upon the date of issue and to be renewed annually on the anniversary date thereof. The permit for a temporary food service establishment shall be for a term not to exceed two (2) consecutive calendar weeks. The permit for a temporary food market shall be for a term not to exceed six (6) consecutive calendar months on a seasonal basis. Any permit issued by the Health Officer shall contain the name and address of the person to whom the permit is granted, the address of the premises for which the same is issued, and such other pertinent data as may be required by the Health Officer.
- (3) A separate permit shall be required for each food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, and vending operator.
- (4) A permit shall be issued subsequent to application and inspection and upon determination by the Health Officer, that the applicant food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or vending operator has complied with all the applicable provisions of this Ordinance, and has tendered the appropriate permit fee hereinafter specified.
- (5) No permit or renewal thereof shall be denied or revoked on arbitrary or capricious grounds.
- (6) Application for a food service establishment, temporary food service establishment, mobile food service establishment, food market and temporary food market shall be made to the Health Officer on forms provided by the Health Officer. Such forms shall show, upon completion and among other information which may be required by the Health Officer, the legal name of the applicant person and address, the name under which said person intends to operate, the address of the establishment, and the number of food handlers employed therein, and the report of the Health Officer of the initial inspection of the applicant.
- (7) Application for a vending operator permit shall be made to the Health Officer on forms provided by the Health Officer for such purpose. Such forms shall show, when completed and among other information which may be required by the Health Officer, the applicant person's full name, residence and post office address, and whether such applicant is an individual, firm, corporation or partnership and in said latter instance, the names of the partners

and their respective addresses shall be included. In addition, said application shall specify the location of any Commissary or Commissaries, the number and type of each food or beverage vending machine and any and all other locations maintained by the applicant where supplies are kept or where vending machines are repaired or renovated, and the type and form of the food to be dispensed through vending machines of the applicant. Said application shall include the signature of the applicant or applicants and the report of the Health Officer of the initial inspection of the applicant. Upon approval by the Health Officer of the premises described in the application the Health Officer shall issue the applicant person a permit.

(8) "Permit not Transferable:" No permit issued to any person under this Ordinance shall be transferable.

(b) "Permit Fees:" Every applicant for a permit to operate a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or as a vending operator shall tender to the Treasurer of Allen County a fee or fees and said fee or fees shall be deposited into the City-County Health Fund for each such operation in accordance with the schedule of fees in the immediately following paragraph.

(c) "Schedule of Fees:" Permit fees shall be paid annually, or for such lesser period or hereafter specified in accordance with the following classifications.

(1) Food Service Establishments, Temporary Food Service Establishments

Temporary Food Markets

(a)	1 thru 5 employees	\$ 30.00
(b)	6 thru 9 employees	50.00
(c)	10 or more employees	70.00
(d)	Temporary food service establishments, each day's operation	5.00
(e)	Temporary food market	3.00
(f)	All other food service establishments not otherwise provided for above or hereafter	50.00

(2) Food Market:

Square Footage of Floor Area:

(a)	Under 2,000 square feet	\$ 25.00
(b)	2,000 to 7,999 square feet	30.00
(c)	8,000 to 9,999 square feet	50.00
(d)	10,000 square feet and over	70.00

(3) Mobile Food Service Establishment:

Gross Weight of Mobile Food Establishment

(a)	Under 1,000 pounds	\$ 30.00
(b)	Over 1,000 pounds	50.00

(4) Vending Operator:

(a)	One to not more than ten food or beverage vending machines, per machine	\$ 75.00
(b)	Eleven to not more than twenty-five machines	75.00
(c)	Twenty-six to not more than fifty machines	100.00
(d)	Fifty-one to not more than one hundred machines	150.00
(e)	One Hundred and one to not more than two hundred machines	200.00
(f)	Two hundred and one but not more than three hundred machines	250.00
(g)	Three hundred and one or more machines	300.00

(d) "Permit Fee Exemption:" The permit fee provisions of this Ordinance shall not apply to food service establishments, temporary food service establishments, mobile food service establishments, temporary food markets operated by, or vending operators which are, religious, educational, and charitable organization, unless they provide food services to persons other than members, guests or students on a regular basis.

(e) Establishments which shall sell or offer for sale only pre-packaged confections such as candy, chewing gum, nut meats, potato chips, pretzels, popcorn, and soft drink beverages, or food dispensed from a coin operated vending machine shall be exempt from the provisions of Section 2 herein regarding the necessity for obtaining a permit from the Health Officer, but not Section 3, hereinafter set forth. Vending machines which dispense only prepackaged, prebottled, non-readily perishable food and beverages shall be exempt from the provisions of this Ordinance.

SECTION 3. Minimum Sanitary Requirements for Food Service Establishments, Food Markets, Temporary Food Markets, Vending Operators and Food and Beverage Vending Machines. All food service establishments, temporary food service establishments, food markets, vending operators, food and beverage vending machines shall comply with the minimum sanitary requirements specified by the Indiana State Board of Health as now provided in its Regulations H.F.D. 17, H.F.D. 19 and H.F.D. 21 or as said Regulations may be hereafter changed or amended by addition, revision or substitution. Such Regulations and any changes and amendments hereto which may be hereafter adopted or promulgated are by reference incorporated herein and made part hereof, two copies of each of which are on file in the office of the Department of Public Health for public inspection.

(a) MINIMUM SANITARY REQUIREMENTS FOR TEMPORARY FOOD MARKETS

- (1) All temporary food markets shall comply with the applicable provisions of this Ordinance
- (2) Every temporary food market shall be located in clean surroundings and be kept in a clean sanitary condition
- (3) All equipment and utensils used in the storing and display of fresh fruits and vegetables shall be kept clean.
- (4) Only fresh fruits and vegetables that are clean, wholesome, free from spoilage and adulteration shall be sold.
- (5) All fruits and vegetables shall be stored or displayed at least thirty (30) inches above the floor level and in such manner as to protect food from contamination by splash, foot traffic, dust, animals or other means.
- (6) The floor area of all temporary fresh fruit and vegetable markets where foods are displayed or stored shall have smooth floors of impervious construction as to be easily cleaned and maintained in a sanitary condition. Provided, however, that wood floors or other impervious construction that is smooth and easily cleanable shall be acceptable for mobile fresh fruit and vegetable vending vehicles.
- (7) Garbage and refuse shall be kept in tightly covered, watertight containers until removed and shall be disposed of daily in a place and manner that does not create a public health hazard.
- (8) Toilet and handwashing facilities shall be provided for the use of employees within a reasonable distance of the employees work area. Provided, however, that mobile fresh fruit and vegetable vehicles shall not be required to have toilet and handwashing facilities on the vehicle.
- (9) Liquid wastes shall be disposed of in a public sewer, or in the absence of a public sewer, by a method which complies with the standards and regulations of the Indiana State Board of Health and Fort Wayne-Allen County Board of Health.
- (10) All plumbing shall comply with the rules and regulations of the Administration Building Council of Indiana.
- (11) All employees shall wear clean outer garments and shall keep their hands and fingernails clean at all times while engaged in the handling of food, utensils, or equipment. Employees shall not expectorate or use tobacco in any form within the establishment.

- (12) The Health Officer may augment such requirements when he may deem it necessary to prevent a condition which may constitute a public health hazard.

SECTION 4. Sale, Examination, and Condemnation of Unwholesome, Adulterated or Misbranded Food or Beverage: It shall be unlawful for any person to sell through a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, food or beverage vending machine within Allen County, Indiana, any food or beverage or substances which is unwholesome, adulterated or misbranded. Provided, however, that the term "misbranded" as used in this Ordinance does not mean a meal item, prepared to an individual recipe, that is denominated by commonly accepted menu terminology. Samples of food, or beverage and other substances may be taken and examined by the Health Officer as often as he may deem necessary to determine freedom from unwholesomeness, adulteration or misbranding. The Health Officer may condemn and forbid the sale of or cause to be removed or destroyed, any food or beverage which is unwholesome, adulterated or misbranded. Whenever the Health Officer finds or has probable cause to believe, that any food or beverage is adulterated and/or misbranded, he shall use the public embargo as outlined in the Indiana Food, Drugs and Cosmetic Act. Article 5, Indiana Public Health Code, Chapter 157, Acts 1949, Enacted March 8, 1949.

SECTION 5. Health and Disease Control.

- (a) Infected Persons Prohibited: No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, a cold, diarrhea, gastrointestinal upsets, or a respiratory infection shall work in any area of a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, or service or maintain food or beverage vending machines in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other individuals; and no person known or believed to be affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, or vending operation has reason to believe that any employee has ^{contaminated} any disease in a communicable form or has become a carrier of such disease, he shall notify the Health Officer immediately.
- b) Procedure When Disease Suspected. When the Health Officer has probable cause to determine that there exists a reasonable possibility of the transmission of disease from any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or a food or beverage vending machine, the Health Officer may require any or all of the following measures:

- (1) The immediate exclusion of all persons determined to be possible carriers or transmitters of disease from any and all food service establishments, temporary food service establishments, mobile food service establishments, food markets, temporary food markets, food or beverage vending machine locations.
- (2) The immediate closing of the affected food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, food and beverage vending machine location until no further danger of the presence of disease exists in the opinion of the Health Officer.
- (3) Medical examinations of any person determined to be a possible carrier or transmitter of disease and said person's associates to such extent as may be deemed necessary to satisfy the Health Officer that a determination of the presence or absence of disease can be made to a reasonable medical certainty.

SECTION 6. Food Handler Education Every food handler or person who is employed or about to be employed as a food handler may be required to attend a food service educational program from time to time at the City-County Department of Public Health.

SECTION 7. Inspection of Food Service Establishments, Temporary Food Service Establishments, Mobile Food Service Establishments, Food Markets, Temporary Food Markets, Food or Beverage Vending Machines.

- (a) Frequency of Inspection: At least once each six months, or more frequently if determined necessary by the Health Officer, the Health Officer shall inspect each food service establishment, mobile food service establishment, food market, temporary food market, food or beverage vending machine for which a permit is required under the provisions of this Ordinance.
- (b) Inspection of Temporary Food Service Establishment: Frequency of Inspection: At least once in each forty-eight hour period the Health Officer shall inspect each temporary food service establishment for which a permit is required under the provisions of this Ordinance.
- (c) Procedure When Violations Noted: If during the inspection of any food service establishment, mobile food service establishment, food market, food or beverage vending machine operation the Health Officer discovers the violation of any of the sanitary requirements in Section 3 of this Ordinance, he shall issue a written order listing such violations to the owner or manager of, in his absence, any other person ostensibly in charge, and fixing a time within which the said operator of said food service establishment, mobile food service establishment, food market, food or vending machine shall abate and remedy such violations. A copy of the written order shall

be filed in the records of the Department of Public Health. If during the inspection of any temporary food service establishment or temporary food market the Health Officer discovers the violation of any of the sanitary requirements in Section 3 of this Ordinance, he shall order the immediate correction of this violation.

- (d) Authority to Inspect and to Copy Records: The owner, manager or other person ostensibly in charge of any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, machine location, or food or beverage vending machine shall upon the request of the Health Officer, permit access to all areas of every such food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market and machine location, as well as all parts of any food or beverage vending machine and shall permit inspection of, access to, and the copying of any and all records relating to food and beverage sanitation of any said establishment, market, machine or location.

SECTION 8. Suspension, Revocation and Reinstatement of Permits:

- (a) Suspension of Permit: Any permit issued under this Ordinance may be temporarily suspended by the Health Officer for any of the following reasons:

- (1) Failure to meet any of the standards required by this Ordinance
- (2) Violation of any provision or provisions of this Ordinance.
- (3) Interference with the Health Officer or any of his authorized representatives in performance of their duties.

A permit issued under the provisions of this Ordinance may be suspended temporarily by the Health Officer for any of the foregoing reasons. At the request of the operator, a hearing shall be afforded him within twenty-four (24) hours of the issuance of the written suspension order and prior to the effective date and hour of such suspension order. Notwithstanding any other provisions of this ordinance, whenever the Health Officer finds insanitary or other conditions, involving the operation of any food service establishment, mobile food service establishment, food market, temporary food market, or food or beverage machine operation which, in his opinion, constitutes an imminent health hazard, he may, without notice, or hearing, issue a written order to the operator, citing the existence of such condition and specifying corrective action to be taken and, in the event of suspected or known imminent health hazard is found to exist, require immediate discontinuance of operation. Such order shall be effective immediately, and shall apply only to the food service establishment, mobile food service establishment, food market, temporary food market, or food or beverage machine operation, or product involved. Any operator to whom such order is issued shall comply therewith, but upon petition to the Health Officer, shall be

afforded a hearing as soon as possible. When necessary corrective action has been taken and on the request of the operator, the Health Officer shall make a reinspection to determine whether operations may be resumed.

- b) Revocation of Permit: Any permit issued hereunder may be revoked by the Health Officer for willful or continuous violation of any provision or provisions of this Ordinance; provided, however, that no such revocation shall be ordered by the Health Officer except upon hearing and at least 10 days written notice to the permittee of the time, place and nature thereof. Such notice shall be served upon the permittee by leaving a copy at his usual place of business or by delivery by Certified Mail to such address. At such hearing, every person who is a party to such proceedings shall have the right to submit evidence and to cross-examine witnesses and to be represented by Counsel. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitious evidence shall be excluded. Upon the conclusion of such hearing, the Health Officer shall make a final order determining the issue in the case, which order shall be final and conclusive upon all parties; provided, however, that the same may be reviewed as hereafter provided. Any person aggrieved by such an order of the Health Officer shall be entitled to a review of the same before the Board of Public Health by filing a written application therefor with the Secretary of the Board within 15 days after such order is issued. Upon receipt of such application, said Board shall hear the matter de novo in open hearing upon at least 10 days notice of the time, place and purpose thereof which notice shall be issued by the Secretary of the Board to all persons affected. Such notice may be served upon the persons affected by leaving a copy at their usual place of business or by delivery by Certified United States Mail to such address. At such hearing the same rules of procedure shall apply as in the case of the hearing before the Health Officer; provided only, that upon written demand by the permittee affected, said Board shall cause the proceedings before it to be recorded by a stenographer or reporter employed for such purpose, and the same, together with all papers and documents filed therein, shall be reproduced by said Board in the form of a transcript, a copy of which shall be available to any party. The expense of such proceedings shall be charged to the party applying for the review, except that copies of transcripts shall be at the expense of the party obtaining the same. Said Board may require the party applying for a review to deposit with such application an amount determined by it as necessary to secure such expense. Said Board shall make written findings of the facts in the case and shall enter its final order or determination of the matter in writing in the permanent records of said Board.

SECTION 9. Revocation of Temporary Permit and Penalties For Continued Operation:

- (a) Upon failure of any person maintaining or operating a temporary food

market to comply with any order of the Health Officer, it shall be the duty of the Health Officer summarily to revoke the permit of such person and establishment and to forbid the further sale or serving of food therein. Upon the revocation of any permit by the Health Officer, the permit of the permittee shall automatically be considered revoked, null and void. The owner, manager of any person ostensibly in control or charge of such establishment and any other person who continues or allows to be continued the selling or serving of food in such temporary food service establishment, temporary food market the permit of which has been revoked, shall be subject to the penalties provided by Section 14 of this Ordinance.

SECTION 10. Prosecution of Violators. Whenever the Health Officer determines that any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, vending operator, food handler or any other person, is in willful violation of any of the provisions of this Ordinance, the Health Officer shall furnish evidence of said willful violation to the City Attorney of the City of Fort Wayne, Indiana, who shall prosecute all persons violating said provisions of this Ordinance.

SECTION 11. Construction, Renovation and Alteration of Food Service Establishments, Temporary Food Service Establishments, Mobile Food Service Establishments, Food Markets, Temporary Food Markets, Food and Beverage Vending Machines. All food service establishments, temporary food service establishments, mobile food service establishments, food markets, temporary food markets, all food and beverage vending machines which are hereafter constructed or renovated shall conform in their construction to the applicable requirements of Section 3 of this Ordinance. Properly prepared plans shall be submitted to the Health Officer for approval before work is begun.

"All equipment installed in a food service establishment for use in the cleaning and bactericidal treatment of utensils and in the preparation, storing, handling or serving of food or drink for consumers shall be of a type conforming with the minimum standards of the National Sanitation Foundation, or better. Any directive by the Health Officer calling for installation or replacement of equipment, or structural change, in excess of one hundred dollars (\$100.00) cost, shall be given in writing with approval certified by the Fort Wayne-Allen County Health Officer personally. A person who receives such a directive may, within ten (10) days after receipt of such notice, appeal the directive to the Fort Wayne-Allen County Board of Public Health. If the decision of the Board of Public Health is adverse to the person he may appeal to the Circuit or Superior Court of Allen County in the manner now provided by law in other civil actions."

SECTION 12. Rules Regulations: The Health Officer, individually, and not through an authorized representative, is hereby empowered to make rules and regulations to carry out, interpret and make effective the provisions of this Ordinance; provided that all such rules and regulations shall be recorded in a permanently bound book kept for such purpose and open to general public inspection, and provided further that no such regulation or rule shall be effec-

tive for a period longer than sixty (60) days unless formally ratified by the Board of Health.

SECTION 13. Severability Clause. Should any section, paragraph, sentence, clause or phrase of this Ordinance be adjudged invalid or unconstitutional for any reason, the remainder of said Ordinance shall not be affected thereby.

SECTION 14. Penalty. Any person who willfully violates any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor. On conviction the violator shall be punished for the first offense by a fine of not more than five hundred dollars (\$500.00); for the second offense by a fine of not more than one thousand dollars (\$1,000.00); and for a third and each subsequent offense by a fine of not more than one thousand dollars (\$1,000.00) to which may be added imprisonment for any determinate period not exceeding ninety (90) days. Each and every violation of the provision of this Ordinance and each day that the same continues shall constitute a separate offense.

SECTION 15. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

SECTION 16. That this Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.


Councilman

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197_____, at _____ o'clock P.M., E.S.T.

Date: _____ CITY CLERK

Read the third time in full and on motion by V. Schmidt, seconded by Hinga, and duly adopted, placed on its passage. Passed ~~(lost)~~ by the following vote:

TOTAL VOTES	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
	<u>8</u>	<u>0</u>		<u>1</u>	
BURNS	✓				
HINGA	✓				
KRAUS	✓				
MOSES	✓				
NUCKOLS				✓	
SCHMIDT, D.	✓				
SCHMIDT, V.	✓				
STIER	✓				
TALARICO	✓				

DATE: 8-12-75 Charles W. Talarico
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~Zoning Map~~) (~~General~~) (~~Annexation~~) (~~Special~~) (~~Appropriation~~) Ordinance (Resolution No. 5-23-75 on the 12th day of August, 1975.)

ATTEST: (SEAL) James S. Stier
CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of August, 1975, at the hour of 10:00 o'clock A. M., E.S.T.

Charles W. Talarico
CITY CLERK

Approved and signed by me this 14th day of August, 1975, at the hour of 2:00 o'clock P. M., E.S.T.

Robert J. Stier
MAYOR

Bill No. G-74-07-45 (as Amended),

REPORT OF THE COMMITTEE ON FINANCE

We, your Committee on Finance to whom was referred an Ordinance

An Ordinance amending Articles I, II, III, IV and V of Chapter 12

of the Municipal Code of the City of Fort Wayne, Indiana, 1946

have had said Ordinance under consideration and beg leave to report back to the Common
Council that said Ordinance Do PASS.

Vivian G. Schmidt - Chairman

William T. Hinga - Vice-Chairman

John Nuckols

Winfield C. Moses, Jr.

Paul M. Burns

Vivian G. Schmidt
William T. Hinga

Winfield C. Moses Jr.
Paul M. Burns

CONCURRED IN
DATED 8-12-75 CHARLES W. WESTERMAN, CITY CLERK

*Hold -
John Logan is to report
back on ordinance*

Bill No. G-74-07-45

REPORT OF THE COMMITTEE ON FINANCE

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An Ordinance amending Articles I, II, III, IV, and V of Chapter 12 of the

Municipal Code of the City of Fort Wayne, Indiana, 1946

have had said Ordinance under consideration and beg leave to report back to the Common

Council that said Ordinance PASS.

William T. Hinga - Chairman

John Nuckols - Vice-Chairman

James S. Stier

Winfield C. Moses, Jr.

Paul "Mike" Burns

PROPOSED AMENDMENTS TO PROPOSED FORT WAYNE -
ALLEN COUNTY FOOD AND BEVERAGE SANITATION ORDINANCE (1974)

Page 10, Section 2, (c) (1), (2), and (3), fees are too high; the maximum fee for a food service establishment should be \$50.00; the fees for food markets should be determined by square footage, not number of employees.

Page 14, Section 4, Line 12, following the word "misbranded" and before the period insert the following: "provided, however, that the term 'misbranded' as used in this ordinance does not mean a meal item, prepared to an individual recipe, that is denominated by commonly-accepted menu terminology".

Pages 16, 17, 18, Section 6, strike this section in its entirety.

Page 20, Section 7(e), strike this subsection in its entirety.

Page 21, Section 8(a), strike this subsection in its entirety and insert in lieu thereof the following:

"Suspension of Permit--A permit issued under the provisions of this ordinance may be suspended temporarily by the health officer upon the violation, by the holder, of any of the terms of this ordinance. At the request of the operator, a hearing shall be afforded him within twenty-four (24) hours of the issuance of the written suspension order and prior to the effective date and hour of such suspension order.

Notwithstanding any other provisions of this ordinance, whenever the health officer finds insanitary or other conditions, involving the operation of any food service establishment, mobile food-service establishment, food market, temporary food market, or food or beverage machine operation which, in his opinion, constitutes an imminent health hazard, he may, without notice, or hearing, issue a written order to the operator, citing the existence of such condition and specifying corrective action to be taken and, in the event of suspected or known imminent health hazard is found to exist, require immediate discontinuance of operation. Such order shall be effective immediately, and shall apply only to the food-service establishment, mobile food-service establishment, food market, temporary food market, or food or beverage machine operation, or product involved. Any operator to whom such order is issued shall comply therewith, but upon petition to the health officer, shall be afforded a hearing as soon as possible. When necessary corrective action has been taken and on the request of the operator, the health officer shall make a reinspection to determine whether operations may be resumed."

Pages 24 and 25, Section 11, insert the following:

"All equipment installed in a food-service establishment for use in the cleansing and bactericidal treatment of utensils and in the preparation, storing, handling or serving of food or drink for consumers shall be of a type conforming with the

minimum standards of The National Sanitation Foundation, or better.

Any directive by the health officer calling for installation or replacement of equipment, or structural change, in excess of one hundred dollars (\$100) cost, shall be given in writing with approval certified by the county health officer personally. A person who receives such a directive may, within ten (10) days after receipt of such notice, appeal the directive to the Allen County Board of Public Health. If the decision of the Board of Public Health is adverse to the person he may appeal to the circuit or superior court of Allen County in the manner now provided by law in other civil actions."

BILL NO. 2-74-07-45

GENERAL ORDINANCE NO. _____

An Ordinance amending Articles I, II, III, IV, and V of Chapter 12 of the Municipal Code of the City of Fort Wayne, Indiana, 1946.

Be It Ordained By The Common Council of the City of Fort Wayne, Indiana:

That Articles I, II, III, IV, and V of Chapter 12 of the Municipal Code of the City of Fort Wayne, Indiana 1946 be repealed and in lieu of, and in substitution therefore be enacted the following, to wit:

"Section" 1.

Definitions. The following definitions shall apply in the interpretation and enforcement of this Ordinance:

- (a) "Food Service Establishment": Said term shall include, but not necessarily be limited to, a restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, tavern, sandwich stand, soda fountain, commissary, drive-in restaurant or drink establishment, snack bar, food counter, dining room, food catering, industrial feeding establishment, private, public, or nonprofit organization or institution routinely serving food, and any other eating or drinking establishment where food or drink is prepared, served or provided for human consumption with or without charge whether fixed or movable.
- (b) "Temporary Food Service Establishment": Said term shall mean any food service facility operating for a period of time not in excess of two (2) consecutive calendar weeks, in connection with a fair, carnival, circus, public exhibition, or any other gathering at any impermanent location, whether or not the facility is fixed or movable.
- (c) "Mobile Food Service Establishment": Said term shall mean any food-serving facility capable of being readily moved from location to location; one without a fixed location.
- (d) "Food Market": Said term shall include, but not necessarily

be limited to, grocery, meat market, poultry market, fish market, fresh fruit and vegetable market, delicatessen, confectionery, candy kitchen, nut store, retail bakery store, or any other establishment, whether fixed or movable, where food, intended for human consumption off the premises, is manufactured, produced, stored, prepared, handled, sold or offered for sale at retail or wholesale. Provided, however, that the provisions of this ordinance shall not include meat or poultry slaughterhouses.

(e) "Temporary Food Market": Said term shall mean any enclosure, stall or other facility, whether fixed or mobile, operating on a seasonal basis for one or more days and not to exceed six (6) consecutive calendar months, where only fresh fruits and vegetables intended for human consumption off the premises are offered for sale at retail or wholesale.

(f) "Food or Beverage Vending Machine": Said term shall mean any self-service device offered for public use which, upon insertion of paper money, coins or tokens, or by other similar means, dispenses unit servings of food or beverage, either in bulk or in package.

(g) "Machine Location": Said term shall include, but not necessarily be limited to, any room, enclosure, space or area where one or more food or beverage vending machines are installed and operated.

- (h) "Commissary": Said term shall include, but not necessarily be limited to, any place in which food, beverages, food or beverage ingredients, containers, or supplies are kept, handled, prepared or stored for the purpose of directly supplying food or beverage vending machines.
- (i) "Food": Said term shall include, but not necessarily be limited to all raw, cooked or processed edible substances which may be used in whole or in part for human consumption, whether solid or liquid, packaged or unpackaged, confectionery, or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof or which become components thereof.
- (j) "Readily Perishable Food": The term "readily perishable food" shall mean any food, as defined in this section, which consists in whole or in part of milk, milk products, eggs, meat, fish, poultry, or other food capable of supporting rapid and progressive growth of microorganisms which can cause infection or intoxication; provided, however, products in hermetically sealed containers processed by heat or other methods approved by the Health Officer to prevent spoilage, and dehydrated, dry or powdered products so low in moisture content as to preclude development of microorganisms are excluded from the terms of this definition.
- (k) "Utensil": Said term shall mean all containers or any equipment of any kind or nature, including, but not

necessarily limited to any kitchenware, tableware, glassware, or cutlery, with which food may come into contact during storage, preparation, serving, or eating, or any and all apparatus, machinery or tools which may be used for the cleaning of said containers or equipment.

- (l) "Vending Operator": Said term shall include, but not necessarily be limited to any person who by contract, agreement, or ownership, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more vending machines.
- (m) "Food Handler": Said term shall include, but not necessarily be limited to any person who may come into contact with food during sale, processing, preparation, packaging, serving, transporting, or who comes in contact with any utensil or equipment of any kind, or who is employed in a room or rooms in which food is processed, prepared, packaged, served, or sold.
- (n) "Health Officer": Said term shall mean the Director of Public Health of the Fort Wayne, Allen County Department of Public Health in Allen County, Indiana, or his authorized representative.
- (o) "Board of Public Health": Said term shall mean the Board Membership of the Fort Wayne, Allen County Department of Public Health of Fort Wayne, Allen County, Indiana.

(p) "Department of Public Health": Said term shall mean the Fort Wayne-Allen County Department of Public Health of Fort Wayne, Allen County, Indiana.

(q) "Person": Said term shall include, but not necessarily be limited to a corporation, firm, partnership, proprietorship, association, business organization, or any other group acting as a unit, as well as an individual, trust or estate, or the agent or legal representative thereof.

"Section 2.

(a) "Permit Requirements": It shall be unlawful for any person to operate a food service establishment, a temporary food service establishment, a mobile food service establishment, a food market, a temporary food market, or to act, whether actually or ostensibly, as a vending operator in Allen County, Indiana, who does not possess a valid permit for each such operation from the Health Officer; provided however, the provisions of this ordinance shall not apply to fruit and vegetable stands maintained and operated by a person who sells direct to consumers, fresh fruits or vegetables, obtained therefrom, grown and sold on land owned or controlled by him. Such permit shall be posted in a conspicuous place in each such food service establishment, temporary food service establishment, food market or temporary food market. With respect to mobile food service establishment, a permit number of size and style approved by the Health Officer, but in not less than one half ($\frac{1}{2}$) inch, bold-faced, capital lettered print, shall be conspicuously displayed on each vehicle.

Any vending operator's permit number, of a size and style approved by the Health Officer, shall be conspicuously displayed on each vending machine operated, maintained or supplied by such operator.

- (1) Only persons who comply with the applicable provisions of this Ordinance shall be entitled to receive and retain such a permit.
- (2) The permit for a food service establishment, mobile food service establishment, food market and vending operator shall be for a term of one year beginning upon the date of issue and to be renewed annually on the anniversary date thereof. The permit for a temporary food service establishment shall be for a term not to exceed two (2) consecutive calendar weeks. The permit for a temporary food market shall be for a term not to exceed six (6) consecutive calendar months on a seasonal basis.
Any permit issued by the Health Officer shall contain the name and address of the person to whom the permit is granted, the address of the premises for which the same is issued, and such other pertinent data as may be required by the Health Officer.
- (3) A separate permit shall be required for each food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, and vending operator.

- (4) A permit shall be issued subsequent to application and inspection and upon determination by the Health Officer, that the applicant food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or vending operator has complied with all the applicable provisions of this Ordinance, and has tendered the appropriate permit fee herein-after specified.
- (5) No permit or renewal thereof shall be denied or revoked on arbitrary or capricious grounds.
- (6) Application for a food service establishment, temporary food service establishment, mobile food service establishment, food market and temporary food market shall be made to the Health Officer on forms provided by the Health Officer. Such forms shall show, upon completion and among other information which may be required by the Health Officer, the legal name of the applicant person and address, the name under which said person intends to operate, the address of the establishment, and the number of food handlers employed therein, and the report of the Health Officer of the initial inspection of the applicant.
- (7) Application for a vending operator permit shall be made to the Health Officer on forms provided by the Health Officer for such purpose. Such forms shall show, when completed and among other information which may be required by the Health Officer, the applicant person's full name, residence and post office address, and whether such applicant is an individual, firm, corporation

or partnership and in said latter instance, the names of the partners and their respective addresses shall be included. In addition, said application shall specify the location of any Commissary or Commissaries, the number and type of each food or beverage vending machine and any and all other locations maintained by the applicant where supplies are kept or where vending machines are repaired or renovated, and the type and form of the food to be dispensed through vending machines of the applicant. Said application shall include the signature of the applicant or applicants and the report of the Health Officer of the initial inspection of the applicant. Upon approval by the Health Officer of the premises described in the application the Health Officer shall issue the applicant person a permit.

- (8) "Permit not Transferable": No permit issued to any person under this Ordinance shall be transferable.

- (b) "Permit Fees": Every applicant for a permit to operate a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or as a vending operator shall tender to the Treasurer of Allen County a fee or fees and said fee or fees shall be deposited into the City-County Health Fund for each such operation in accordance with the schedule of fees in the immediately following paragraph.

- (c) "Schedule of Fees": Permit fees shall be paid annually, or for such lesser period or hereafter specified in accordance with the following classifications.

(1) Food Service Establishments, Temporary Food Service Establishments, Food Markets and Temporary Food Markets:

(a)	1 thru 5 employees	\$ 30.00
(b)	6 thru 9 employees	50.00
(c)	10 or more employees	75.00
(d)	Temporary food service establishments, each day's operation	5.00
(e)	Temporary food market	3.00
(f)	All other food service establishments not otherwise provided for above or herein-after	50.00

(2) Mobile Food Service Establishment:

	Gross Weight of Mobile Food Establishment	Fee
(a)	Under 1,000 pounds	\$ 30.00
(b)	Over 1,000 pounds	50.00

(3) Vending Operator:

(a)	One to not more than ten food or beverage vending machines, per machine	5.00
(b)	Eleven to not more than twenty-five machines	75.00
(c)	Twenty-six to not more than fifty machines	100.00
(d)	Fifty-one to not more than one hundred machines	150.00
(e)	One hundred and one to not more than two hundred machines	200.00

- (f) Two hundred and one but not more than three hundred machines \$ 250.00
- (g) Three hundred and one or more machines 300.00

(d) "Permit Fee Exemption": The permit fee provisions of this Ordinance shall not apply to food service establishments, temporary food service establishments, mobile food service establishments, temporary food markets operated by, or vending operators which are, religious, educational, and charitable organization, unless they provide food services to persons other than members, guests or students on a regular basis.

(e) Establishments which shall sell or offer for sale only pre-packaged confections such as candy, chewing gum, nut meats, potato chips, pretzels, popcorn, and soft drink beverages, or food dispensed from a coin operated vending machine shall be exempt from the provisions of Section 2 herein regarding the necessity for obtaining a permit from the Health Officer, but not Section 3, herein-after set forth. Vending machines which dispense only prepackaged, prebottled, non-readily perishable food and beverages shall be exempt from the provisions of this Ordinance.

"Section 3. Minimum Sanitary Requirements for Food Service Establishments, Temporary Food Service Establishments, Food Markets, Temporary Food Markets, Vending Operators and Food and Beverage Vending Machines.

All food service establishments, temporary food service establish-

ments, food markets, vending operators, food and beverage vending machines shall comply with the minimum sanitary requirements specified by the Indiana State Board of Health as now provided in its Regulations H.F.D. 17, H.F.D. 19 and H.F.D. 21 or as said Regulations may be hereafter changed or amended by addition, revision or substitution. Such Regulations and any changes and amendments hereto which may be hereafter adopted or promulgated are by reference incorporated herein and made part hereof, two copies of each of which are on file in the office of the Department of Public Health for public inspection.

(a) MINIMUM SANITARY REQUIREMENTS FOR TEMPORARY FOOD MARKETS

- (1) All temporary food markets shall comply with the applicable provisions of this Ordinance.
- (2) Every temporary food market shall be located in clean surroundings and be kept in a clean sanitary condition.
- (3) All equipment and utensils used in the storing and display of fresh fruits and vegetables shall be kept clean.
- (4) Only fresh fruits and vegetables that are clean, wholesome, free from spoilage and adulteration shall be sold.
- (5) All fruits and vegetables shall be stored or displayed at least thirty (30) inches above the floor level and in such manner as to protect food from contamination by splash, foot traffic, dust, animals or other means.
- (6) The floor area of all temporary fresh fruit and vegetable markets where foods are displayed or stored shall have smooth floors of impervious construction as to be easily cleaned and

maintained in a sanitary condition. Provided, however, that wood floors or other impervious construction that is smooth and easily cleanable shall be acceptable for mobile fresh fruit and vegetable vending vehicles.

- (7) Garbage and refuse shall be kept in tightly covered, watertight containers until removed and shall be disposed of daily in a place and manner that does not create a public health hazard.
- (8) Toilet and handwashing facilities shall be provided for the use of employees within a reasonable distance of the employees work area. Provided, however, that mobile fresh fruit and vegetable vehicles shall not be required to have toilet and handwashing facilities on the vehicle.
- (9) Liquid wastes shall be disposed of in a public sewer, or in the absence of a public sewer, by a method which complies with the standards and regulations of the Indiana State Board of Health and Fort Wayne - Allen County Board of Health.
- (10) All plumbing shall comply with the rules and regulations of the Administration Building Council of Indiana.
- (11) All employees shall wear clean outer garments and shall keep their hands and fingernails clean at all times while engaged in the handling of food, utensils, or equipment. Employees shall not expectorate or use tobacco in any form within the establishment.
- (12) The Health Officer may augment such requirements when he may deem it necessary to prevent a condition which may constitute a public health hazard.

"Section 4. Sale, Examination, and Condemnation of Unwholesome, Adul-

terated or Misbranded Food or Beverage:

It shall be unlawful for any person to sell through a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, food or beverage vending machine within Allen County, Indiana, any food or beverage or substances which is unwholesome, adulterated or misbranded. Samples of food, or beverage and other substances may be taken and examined by the Health Officer as often as he may deem necessary to determine freedom from unwholesomeness, adulteration or misbranding. The Health Officer may condemn and forbid the sale of or cause to be removed or destroyed, any food or beverage which is unwholesome, adulterated or misbranded.

Whenever the Health Officer finds, or has probable cause to believe, that any food or beverage is adulterated and/or misbranded, he shall use the public embargo as outlined in the Indiana Food, Drug and Cosmetic Act. Article 5, Indiana Public Health Code, Chapter 157, Acts 1949, Enacted March 8, 1949.

"Section 5. Disease Control:

- (a) Infected Persons Prohibited: No person who is infected with any communicable disease or is a carrier of such disease shall work in any food service establishment, temporary food service establishment, mobile food service establishment,

food market, temporary food market, or service or maintain food or beverage vending machines, and no food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or vending operator shall employ any such person or any person suspected of being infected with any disease in a communicable form or being a carrier of such disease. If the food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or vending operator suspects that any such person has contacted any disease in a communicable form or has become a carrier of such disease, he shall notify the Health Officer immediately.

(b)

Procedure When Disease Suspected: When the Health Officer has probable cause to determine that there exists a reasonable possibility of the transmission of disease from any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or a food or beverage vending machine, the Health Officer may require any or all of the following measures:

- (1) The immediate exclusion of all persons determined to be possible carriers or transmitters of disease from any and all food service establishments, temporary food service establishments, mobile food service establishments, food markets, temporary food markets, food or beverage vending machine locations.
- (2) The immediate closing of the affected food service establishment, temporary food service establishment, mobile food service

establishment, food market, temporary food market, food and beverage vending machine location until no further danger of the presence of disease exists in the opinion of the Health Officer.

- (3) Medical examinations of any person determined to be a possible carrier or transmitter of disease and said person's associates to such extent as may be deemed necessary to satisfy the Health Officer that a determination of the presence or absence of disease can be made to a reasonable medical certainty.

"Section 6. Food Handlers:

- (a) Health Certificates: Every food handler or person who is employed or about to be employed as a food handler shall secure and maintain a current health certificate issued by a licensed physician. Securing and maintaining such a certificate shall include an initial blood test for syphilis, an annual chest x-ray or approved skin test for tuberculosis and any other test deemed necessary by the physician to determine whether or not such person has, or is a carrier of, any infectious or contagious disease.

- (b) Permit: No food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or vending operator shall employ any person unless such person has a food handler's permit issued by the Health Officer.

Every food handler or person who is employed or about to be employed as food handler by a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, vending

operator shall obtain a food handler's permit from the Health Officer.

Requirements for the food handlers permit shall be determined by the Board of Health. Additionally, in order to secure and maintain a current food handler's permit, every food handler or person who is employed or about to be employed as a food handler may be required to attend a food service educational program from time to time and at such place as may be designated by the Health Officer.

(a) Permittee Shall Carry: All current food handler's permits shall be carried on the person of the permittee at all times when said person is functioning as a food handler.

(b) Permittee Who Refuses to Comply: Every food handler or person who is employed or about to be employed as a food handler by a food service establishment, mobile food service establishment, temporary food service establishment, food market, temporary food market, vending operator who refuses to comply with the requirements of this Ordinance pertaining to food handlers or who violates any of the provisions of this Ordinance shall be excluded by the Health Officer in writing from working in any food operation governed by this Ordinance pending compliance with the provisions of this Ordinance.

- (e) Employer Cooperation Required: Any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market which, or vending machine operator who, continues to employ or retain on the job any person subject to the requirements of this section, but which person has failed or refused to comply with said requirements, shall be subject to permit suspension and revocation procedures enumerated under Section 8 of this Ordinance.

"Section 7. Inspection of Food Service Establishments, Temporary Food Service Establishments, Mobile Food Service Establishments, Food Markets, Temporary Food Markets, Food or Beverage Vending Machines.

- (a) Frequency of Inspection: At least once each six months, or more frequently if determined necessary by the Health Officer, the Health Officer shall inspect each food service establishment, mobile food service establishment, food market, temporary food market, food or beverage vending machine for which a permit is required under the provisions of this Ordinance.
- (b) Inspection of Temporary Food Service Establishment:
Frequency of Inspection: At least once in each forty-eight hour period the Health Officer shall inspect each temporary food service establishment for which a permit is required under the provisions of this Ordinance.
- (c) Procedure When Violations Noted: If during the inspection of any food service establishment, mobile food service

establishment, food market, food or beverage vending machine operation the Health Officer discovers the violation of any of the sanitary requirements in Section 3 of this Ordinance, he shall issue a written order listing such violations to the owner or manager or, in his absence, any other person ostensibly in charge, and fixing a time within which the said operator of said food service establishment, mobile food service establishment, food market, food or vending machine shall abate and remedy such violations. A copy of the written order shall be filed in the records of the Department of Public Health. If during the inspection of any temporary food service establishment or temporary food market the Health Officer discovers the violation of any of the sanitary requirements in Section 3 of this Ordinance, he shall order the immediate correction of this violation.

- (d) Authority to Inspect and to Copy Records: The owner, manager or other person ostensibly in charge of any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, machine location, or food or beverage vending machine shall upon the request of the Health Officer, permit access to all areas of every such food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market and machine location, as well as all parts of any food or beverage vending machine and shall permit inspection of, access to, and the copying of any and all records relating to food and beverage sanitation of any said establishment, market, machine or location.

(e)

Food Service Establishments, Food Markets, or Other Food or Beverage Sources Outside the Jurisdiction of the Department of Public Health, Fort Wayne and Allen County.

- (1) Food from food service establishments, food markets, or other food or beverage sources outside the jurisdiction of the Department of Public Health of Fort Wayne and Allen County may be sold within the County, provided said food service establishments, food markets, or other sources of food or beverage conform with the provisions of this Ordinance.
- (2) To determine the extent of compliance with such provisions the Health Officer may inspect food service establishments, food markets, or other food or beverage sources outside the jurisdiction of the Fort Wayne-Allen County Department of Public Health, provided, however, the Health Officer may accept, in lieu of such inspections, the certification of compliance of the health jurisdiction in which the food service establishment, food market, or other food or beverage source is located.
- (3) In addition to the fees otherwise provided for herein, a food service establishment, food market, or other food or beverage source outside the jurisdiction of the Fort Wayne-Allen County Department of Public Health shall pay an inspection fee of \$25.00 per day for each inspection by the Health Officer. Such inspection fee shall be payable to the Treasurer of Allen County and said fee shall be deposited into the City-County Health Fund not later than the 25th. day of the month following the calendar month in which such inspection is made.

"Section 8. Suspension, Revocation and Reinstatement of Permits:

(a) Suspension of Permit: Any permit issued under this Ordinance may be temporarily suspended by the Health Officer without notice or hearing for a period of time not to exceed 30 days for any of the following reasons:

- (1) Failure to meet any of the standards required by this Ordinance.
- (2) Violation of any provision or provisions of this Ordinance.
- (3) Interference with the Health Officer or any of his authorized representatives in performance of their duties. ✓

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Provided, however, that upon written application from the permittee, served upon the Health Officer within 15 days after such suspension, the Health Officer shall conduct a hearing upon the matter after at least 5 days written notice to the permittee, of the time, place, and purpose thereof, after which hearing the Health Officer shall determine whether any such suspension is to be lifted or continued; provided, further, that any such suspension order shall be issued by the Health Officer in writing and served upon the permittee by leaving a copy at his usual place of business or by delivery of Certified Mail to such address. Any person whose permit has been suspended at any time may make application for the reinstatement of his permit.

(b) Revocation of Permit: Any permit issued hereunder may be revoked by the Health Officer for willful or continuous

violation of any provision or provisions of this Ordinance; provided, however, that no such revocation shall be ordered by the Health Officer except upon hearing and at least 10 days written notice to the permittee of the time, place and nature thereof. Such notice shall be served upon the permittee by leaving a copy at his usual place of business or by delivery by Certified Mail to such address. At such hearing, every person who is a party to such proceedings shall have the right to submit evidence and to cross-examine witnesses and to be represented by Counsel. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitious evidence shall be excluded. Upon the conclusion of such hearing, the Health Officer shall make a final order determining the issue in the case, which order shall be final and conclusive upon all parties; provided, however, that the same may be reviewed as hereafter provided. Any person aggrieved by such an order of the Health Officer shall be entitled to a review of the same before the Board of Public Health by filing a written application therefore with the Secretary of the Board within 15 days after such order is issued. Upon receipt of such application, said Board shall hear the matter de novo in open hearing upon at least 10 days notice of the time, place and purpose thereof which notice shall be issued by the Secretary of the Board to all persons affected. Such notice may be served upon the persons affected by leaving a copy at their usual place of

business or by delivery by Certified United States Mail to such address. At such hearing, the same rules of procedure shall apply as in the case of the hearing before the Health Officer; provided, only, that upon written demand by the permittee affected, said Board shall cause the proceedings before it to be recorded by a stenographer or reporter employed for such purpose, and the same, together with all papers and documents filed therein, shall be reproduced by said Board in the form of a transcript, a copy of which shall be available to any party. The expense of such proceedings shall be charged to the party applying for the review, except that copies of transcripts shall be at the expense of the party obtaining the same. Said Board may require the party applying for a review to deposit with such application an amount determined by it as necessary to secure such expense. Said Board shall make written findings of the facts in the case and shall enter its final order or determination of the matter in writing in the permanent records of said Board.

"Section 9. Revocation of Temporary Permit and Penalties For Continued Operation:

- (a) Upon failure of any person maintaining or operating a temporary food service establishment, temporary food market to comply with any order of the Health Officer, it shall be the duty of the Health Officer summarily to revoke the permit of such person and establishment and to forbid the further sale or serving of food therein. Upon the revocation

of any permit by the Health Officer, the permit of the permittee shall automatically be considered revoked, null and void. The owner, manager or any person ostensibly in control or charge of such establishment and any other person who continues or allows to be continued the selling or serving of food in such temporary food service establishment, temporary food market the permit of which has been revoked, shall be subject to the penalties provided by Section 14 of this Ordinance.

"Section 10. Prosecution of Violators: Whenever the Health Officer determines that any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, vending operator, food handler or any other person, is in willful violation of any of the provisions of this Ordinance, the Health Officer shall furnish evidence of said willful violation to the Prosecuting Attorney of Allen County Indiana who shall prosecute all persons violating said provisions of this Ordinance.

"Section 11. Construction, Renovation and Alteration of Food Service Establishments, Temporary Food Service Establishments, Mobile Food Service Establishments, Food Markets, Temporary Food Markets, Food and Beverage Vending Machines.
All food service establishments, temporary food service establishments, mobile food service establishments, food markets, temporary food markets, all food and beverage vending machines which are hereafter constructed or

renovated shall conform in their construction to the applicable requirements of Section 3 of this Ordinance. Properly prepared plans shall be submitted to the Health Officer for approval before work is begun.

"Section 12.

Rules Regulations:

The Health Officer is hereby empowered to make rules and regulations to carry out, interpret and make effective the provisions of this Ordinance; provided that all such rules and regulations shall be recorded in a permanently bound book kept for such purpose and open to general public inspection, and provided further that no such regulation or rule shall be effective for a period longer than sixty (60) days unless formally ratified by the Board of Health.

"Section 13.

Severability - Clause:

Should any section, paragraph, sentence, clause or phrase of this Ordinance be adjudged invalid or unconstitutional for any reason, the remainder of said Ordinance shall not be affected thereby.

"Section 14.

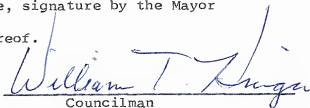
Penalty:

Any person who willfully violates any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor. On conviction the violator shall be punished for the first offense by a fine of not more than five hundred dollars

(\$500.00); for the second offense by a fine of not more than one thousand dollars (\$1,000.00); and for a third and each subsequent offense by a fine of not more than one thousand dollars (\$1,000.00) to which may be added imprisonment for any determinate period not exceeding ninety (90) days. Each and every violation of the provision of this Ordinance and each day that the same continues shall constitute a separate offense.

Section 15. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 16. That this Ordinance shall be in full force and effect from and after its passage, signature by the Mayor and legal publication thereof.


Councilman

Approved as to form and legality

this 2nd day of July, 1974.


Attorney for the Common Council of the
City of Fort Wayne.

Read the first time in full and on motion by Henge, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee on Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197_____, at _____ o'clock P.M., E.S.T.

Date: 7/9/74

Shirley W. Stadlerman
CITY CLERK

Read the third time in full and on motion by _____, seconded by _____, and duly adopted, placed on its passage. Passed (LOST) by the following vote:

	AYES _____	NAYS _____	ABSTAINED _____	ABSENT _____ to-wit:
BURNS	_____	_____	_____	_____
HINGA	_____	_____	_____	_____
KRAUS	_____	_____	_____	_____
MOSES	_____	_____	_____	_____
NUCKOLS	_____	_____	_____	_____
SCHMIDT, D.	_____	_____	_____	_____
SCHMIDT, V.	_____	_____	_____	_____
STIER	_____	_____	_____	_____
TALARICO	_____	_____	_____	_____

DATE: _____

CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. _____ on the _____ day of _____, 197____.

ATTEST: (SEAL)

CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 197_____, at the hour of _____ o'clock _____ M., E.S.T.

CITY CLERK

Approved and signed by me this _____ day of _____, 197_____, at the hour of _____ o'clock _____ M., E.S.T.

John A. Lutz
MAYOR



City Clerk Memorandum

CHARLES W. WESTERMAN, Clerk

To Dr. O. Kaiser - Board of Health Date 7-19-74
From Charles W. Westerman - City Clerk
Subject Appearance before Common Council - July 23, 1974

COPIES TO:

RE: BILL NO. G-74-07-45

AN ORDINANCE amending Articles I, II, III, IV,
and V of Chapter 12 of the Municipal Code of the
City of Fort Wayne, Indiana, 1946.

Your presence is requested on July 23, 1974, at 7:00 o'clock
P.M., Room 124, by the members of the Common Council and
William Hinga, Chairman of the Standing Committee of Finance,
in regard to Bill No. G-74-07-45.

It is also requested that you bring along any materials or
information that you may have which will help the Council in
its decision regarding the above bill.

Charlie



CITY OF FORT WAYNE

FORT WAYNE, INDIANA

CHARLES W. WESTERMAN
CITY CLERK

May 22, 1975

Dear Sir:

The Common Council of the City of Fort Wayne, Indiana, has asked me, as Clerk, to make arrangements and preparations for a joint-meeting of the County Council members, City-County Board of Health Commission and the Fort Wayne Common Council members, regarding legislation on:

BILL NO. G-74-07-45

AN ORDINANCE amending Articles I, II, III,
IV and V of Chapter 12 of the Municipal Code
of the City of Fort Wayne, Indiana, 1946
(RESTAURANT ORDINANCE)

It has been suggested by the members of the City Council that the date of June 3, 1975, at 7:30 o'clock P.M., in the Chambers of the City Council, said meeting would take place. These preparations are pursuant to your acceptance. Therefore, may I request your cooperation and acceptance regarding your appearance with our Common Council. Please let us know by writing to:

Mr. Charles W. Westerman
Clerk of the City of Fort Wayne, Indiana
Room 122 - City-County Building
Fort Wayne, Indiana 46802

Respectfully yours,

Charles W. Westerman
City Clerk

DIGEST SHEETTITLE OF ORDINANCE GENERAL274-07-45

DEPARTMENT REQUESTING ORDINANCE _____

SYNOPSIS OF ORDINANCE Amending certain articles of Chapter 12 of theMunicipal Code having to do with Food Service Establishments,establishing a schedule of fees; inspection of Food ServiceEstablishments, Food Markets, & authority to inspect and penaltiesfor violations

EFFECT OF PASSAGE _____

EFFECT OF NON-PASSAGE _____

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) NoneASSIGNED TO COMMITTEE (PRESIDENT) Forner



CITY OF FORT WAYNE

FORT WAYNE, INDIANA

CHARLES W. WESTERMAN
CITY CLERK

August 20, 1975

Miss Helen Libbing
Fort Wayne Newspapers, Inc.
600 West Main Street
Fort Wayne, Indiana 46802

Dear Miss Libbing:

Please give the attached full coverage on the dates of August 22 and August 29, 1975, in both the News Sentinel and Journal Gazette.

RE: Legal Notice for Common Council
of Fort Wayne, Indiana.

Bill No. Z-75-06-06
Zoning Map Ordinance No. Z-07-75
Historical District

Bill No. G-74-07-45
(As Amended)
General Ordinance No. G-23-75
Food Establishment Ordinance

Please send us five (5) copies of the Publisher's Affidavit from both newspapers.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Charles W. Westerman".

Charles W. Westerman
City Clerk

CWW/ne
Encl: 2

proprietorship, association, business or organization, as well as individual acting as a unit, as well as individual, partnership or estate, or the agent or legal representative thereof.

Section 2. (a) Permit Requirements. It shall be unlawful for any person to operate a food service establishment, a temporary food service establishment, a mobile food service establishment, a food market, a temporary food market, or to act, whether actually or ostensibly, as a vending operator in Allen County, Indiana, who does not possess a valid permit for each such operation from the Health Officer provided however, the provisions of this ordinance shall not apply to fruit and vegetable stands maintained and operated by a person who sells direct to consumers, fresh fruits or vegetables, obtained therefrom, grown and sold on land owned or controlled by him. Such permit shall be posted in a conspicuous place in each such food service establishment, temporary food service establishment, food market or temporary food market. With respect to mobile food service establishment, a permit number of size and style approved by the Health Officer, but in no less than one half (1/2) inch, bold-faced, capital lettered print, shall be conspicuously displayed on each vehicle. Any vending operator's permit number, of a size and style approved by the Health Officer, shall be conspicuously displayed on each vending machine operated, maintained or supplied by such operator.

(1) Only persons who comply with the applicable provisions of this Ordinance shall be entitled to receive and retain such a permit.

(2) The permit for a food service establishment, mobile food service establishment, food market and vending operator shall be for a term of one year beginning upon the date of issue and to be renewed annually, on the anniversary date thereof. The permit for a temporary food service establishment shall be for a term not to exceed two (2) consecutive calendar weeks. The permit for a temporary food market shall be for a term not to exceed six (6) consecutive calendar months on a seasonal basis. Any permit issued by the Health Officer shall contain the name and address of the person to whom the permit is granted, the address of the premises for which the same is issued, and such other pertinent data as may be required by the Health Officer.

(3) A separate permit shall be required for each food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, and vending operator.

(4) A permit shall be issued subsequent to application and inspection and upon determination by the Health Officer, that the applicant food service establishment, temporary food service establishment, food market, temporary food market or vending operator has complied with all the applicable provisions of this Ordinance, and has tendered the appropriate permit fee hereinafter specified.

(5) No permit or renewal thereof shall be denied or revoked on arbitrary or capricious grounds.

(a) Application for a food service establishment, temporary food service establishment, mobile food service establishment, food market and temporary food market shall be made to the Health Officer on forms provided by the Health Officer. Such forms shall show, upon completion and among other information which may be required by the Health Officer, the legal name of the applicant person and address, the name under which said person intends to operate, the address of the establishment, and the number of food port of the Health Officer of the initial inspection of the applicant.

(1) Application for a vending operator permit shall be made to the Health Officer on forms provided by the Health Officer for such purpose. Such forms shall show, upon completion and among other information which may be required by the Health Officer, the applicant person's full name, residence and post office address, and whether such applicant is an individual, firm, corporation or partnership and in said latter instance, the names of the partners and their respective addresses shall be included. In addition, said application shall specify the location of any commissary or commissaries, the number and type of each food or beverage vending machine and any and all other locations maintained by the applicant where supplies are kept or where vending machines are repaired or renovated, and the type and form of the food to be dispensed through vending machines of the applicant. Said application shall include the signature of the applicant or applicants and the report of the Health Officer of the initial inspection of the applicant. Upon approval by the Health Officer of the premises described in the application the Health Officer shall issue the applicant person a permit.

(b) "Permit not Transferable." No permit issued to any person under this Ordinance shall be transferable.

(c) "Permit Fees." Every applicant for a permit to operate a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or as a vending operator shall tender to the Treasurer of Allen County a fee or fees and said fee or fees shall be deposited into the City-County Health Fund for each such operation in accordance with the schedule of fees in the immediately following paragraph.

(d) "Schedule of Fees." Permit fees shall be paid annually, or for such lesser period or hereafter specified in accordance with the following classification:

(1) Food Service Establishments, Temporary Food Service Establishments, Temporary Food Markets

(a) 1 thru 5 employees, \$25.00
(b) 6 thru 9 employees, \$50.00

(c) 10 or more employees, \$75.00

(d) Temporary food service establishments, each day's operation, \$5.00

(e) Temporary food market, \$3.00

(f) All other food service establishments not otherwise provided for above or hereafter, \$50.00

(2) Food Market:

Square Footage of Floor Area:

(a) Under 2,000 square feet, \$25.00

(b) 2,000 to 7,999 square feet, \$50.00

(c) 8,000 to 9,999 square feet, \$50.00

(d) 10,000 square feet and over, \$75.00

(3) Mobile Food Service Establishment: Gross Weight of Mobile Food Establishment: (a) Under 1,000 pounds, \$25.00, (b) Over 1,000 pounds, \$50.00.

(4) Vending Operator: (a) One to not more than ten food or beverage vending machines, per machine \$75.00. (b) Eleven to not more than twenty-five machines \$75.00. (c) Twenty-six to not more than fifty machines \$100.00. (d) Fifty-one to not more than one hundred machines \$150.00. (e) One Hundred and one to not more than two hundred machines \$200.00. (f) Two hundred and one to not more than three hundred machines \$250.00. (g) Three hundred and one or more machines \$300.00.

(d) "Permit Fee Exemption." The permit fee provisions of this Ordinance shall not apply to food service establishments, temporary food service establishments, mobile food service establishments, temporary food markets operated by, or vending operators which are religious, educational, and charitable organization, unless they provide food services to persons other than members, guests or students on a regular basis.

(e) Establishments which shall sell or offer for sale only pre-packaged con-

chines \$150.00 (g) Three hundred and one or more machines \$300.00.

(d) "Permit Fee Exemption." The permit fee provisions of this Ordinance shall not apply to food service establishments, temporary food service establishments, mobile food service establishments, temporary food markets operated by, or vending operators which are religious, educational, and charitable organizations, unless they provide food services to persons other than members, guests or students on a regular basis.

(e) Establishments which shall sell or offer for sale only pre-packaged confections such as candy, chewing gum, nut meats, potato chips, pretzels, popcorn, and soft drink beverages, or food dispensed from a coin-operated vending machine shall be exempt from the provisions of Section 2 herein regarding the necessity for obtaining a permit from the Health Officer, but not Section 2, hereinafter set forth. Vending machines which dispense only pre-packaged, pre-bottled, non-readily perishable food and beverages shall be exempt from the provisions of this Ordinance.

SECTION 3. Minimum Sanitary Requirements for Food Service Establishments, Food Markets, Temporary Food Markets, Vending Operators and Food and Beverage Vending Machines. All food service establishments, temporary food service establishments, food markets, vending operators, food and beverage vending machines shall comply with the minimum sanitary requirements specified by the Indiana State Board of Health as now provided in its Regulations H.F.D. 17, H.F.D. 19 and H.F.D. 21 or as said Regulations may be hereafter changed or amended by addition, revision or substitution. Such Regulations and any changes and amendments hereto which may be hereafter adopted or promulgated are by reference incorporated herein and made part hereof, two copies of each of which are on file in the office of the Department of Public Health for public inspection.

(a) Minimum Sanitary Requirements for Temporary Food Markets.

(1) All temporary food markets shall comply with the applicable provisions of this Ordinance.

(2) Every temporary food market shall be located in clean surroundings and be kept in a clean sanitary condition.

(3) All equipment and utensils used in the storing and display of fresh fruits and vegetables shall be kept clean.

(4) Only fresh fruits and vegetables that are clean, wholesome, free from soilage and adulteration shall be sold.

(5) All fruits and vegetables shall be stored or displayed at least thirty (30) inches above the floor level and in such manner as to protect food from contamination by splash, foot traffic, dust, animals or other means.

(6) The floor area of all temporary fresh fruit and vegetable markets where foods are displayed or stored shall have smooth floors of impervious construction as to be easily cleaned and maintained in a sanitary condition. Provided, however, that wood floors or other impervious construction that is smooth and easily cleanable shall be acceptable for mobile fresh fruit and vegetable vending vehicles.

(7) Garbage and refuse shall be kept in tightly covered, watertight containers until removed and shall be disposed of daily in a place and manner that does not create a public health hazard.

(8) Toilet and handwashing facilities shall be provided for the use of employees within a reasonable distance of the employees work area. Provided, however, that mobile fresh fruit and vegetable vehicles shall not be required to have toilet and handwashing facilities on the vehicle.

(9) Liquid wastes shall be disposed of in a public sewer, or in the absence of a public sewer, by a method which complies with the standards and regulations of the Indiana State Board of Health and Fort Wayne-Alien County Board of Health.

(10) All plumbing shall comply with the rules and regulations of the Administration Building Council of Indiana.

(11) All employees shall wear clean outer garments and shall keep their hands and fingernails clean at all times while engaged in the handling of food, utensils, or equipment. Employees shall not expectorate or use tobacco in any form within the establishment.

(12) The Health Officer may augment such requirements when he may deem it necessary to prevent a condition which may constitute a public health hazard.

SECTION 4. Sale, Examination, and Condemnation of Unwholesome, Adulterated or Misbranded Food or Beverage. It shall be unlawful for any person to sell through a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, food or beverage vending machine within Allen County, Indiana, any food or beverage or substances which is unwholesome, adulterated or misbranded. Provided, however, that the term "misbranded" as used in this Ordinance does not mean a meal item, prepared to an individual recipe, that is denominated by commonly accepted menu terminology. Samples of food or beverage and other substances may be taken and examined by the Health Officer as often as he may deem necessary to determine freedom from unwholesomeness, adulteration or misbranding. The Health Officer may condemn and forbid the sale of or cause to be removed or destroyed, any food or beverage which is unwholesome, adulterated or misbranded. Whenever the Health Officer finds or has probable cause to believe, that any food or beverage is adulterated and/or misbranded, he shall use the public embargo as outlined in the Indiana Food, Drugs and Cosmetic Act, Article 5, Indiana Public Health Code, Chapter 137, Acts 1949, Enacted March 3, 1949.

SECTION 5. Health and Disease Control.

(a) Infected Persons Prohibited: No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, a cold, diarrhea, gastrointestinal upsets, or a respiratory infection shall work in any area of a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, or service or maintain food or beverage vending machines in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other individuals, and no person known or believed to be affected with any such disease or condition shall be employed in such an area or capacity, if the manager or person in charge of the food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, or vending operation has reason to believe that any employee has contacted any disease in a communicable form or has become a

carrier of such disease, he shall notify the Health Officer immediately.

(b) Procedure When Disease Suspected. When the Health Officer has probable cause to determine that there exists a reasonable possibility of the transmission of disease from any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, or food or beverage vending machine, the Health Officer may require any or all of the following measures:

(1) The immediate exclusion of all

food service establishment, mobile food service establishment, food market, temporary food market, or vending operation has reason to believe that any employee has contacted any disease in a communicable form or has become a

carrier of such disease, he shall notify the Health Officer immediately.

(b) Procedure When Disease Suspected. When the Health Officer has probable cause to determine that there exists a reasonable possibility of the transmission of disease from any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or a food or beverage vending machine, the Health Officer may require any or all of the following measures:

(1) The immediate exclusion of all persons determined to be possible carriers or transmitters of disease from any and all food service establishments, temporary food service establishments, mobile food service establishments, food markets, temporary food markets, food or beverage vending machine locations.

(2) The immediate closing of the affected food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, food and beverage vending machine location until no further danger of the presence of disease exists in the opinion of the Health Officer.

(3) Medical examinations of any person determined to be a possible carrier or transmitter of disease and said person's associates to such extent as may be deemed necessary to satisfy the Health Officer that a determination of the presence or absence of disease can be made to a reasonable medical certainty.

SECTION 4. Food Handler Education. Every food handler or person who is employed or about to be employed as a food handler may be required to attend a food service educational program from time to time at the City-County Department of Public Health.

SECTION 7. Inspection of Food Service Establishments. Temporary Food Service Establishments, Mobile Food Service Establishments, Food Markets, Temporary Food Markets, Food or Beverage Vending Machines.

(a) Frequency of Inspection: At least once each six months, or more frequently if determined necessary by the Health Officer, the Health Officer shall inspect each food service establishment, mobile food service establishment, food market, temporary food market, food or beverage vending machine for which a permit is required under the provisions of this Ordinance.

(b) Inspection of Temporary Food Service Establishment. Frequency of Inspection: At least once in each forty-eight hour period the Health Officer shall inspect each temporary food service establishment for which a permit is required under the provisions of this Ordinance.

(c) Procedure When Violations Noted: If during the inspection of any food service establishment, mobile food service establishment, food market, food or beverage vending machine operation the Health Officer discovers the violation of any of the sanitary requirements in Section 3 of this Ordinance, he shall issue a written order listing such violations to the owner or manager of, in his absence, any other person ostensibly in charge, and fixing a time within which the said operator of said food service establishment, mobile food service establishment, food market, food or beverage vending machine shall abate and remedy such violations. A copy of the written order shall be filed in the records of the Department of Public Health. If during the inspection of any temporary food service establishment or temporary food market the Health Officer discovers the violation of any of the sanitary requirements in Section 3 of this Ordinance, he shall order the immediate correction of this violation.

(d) Authority to Inspect and to Copy Records: The owner, manager or other person ostensibly in charge of any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, machine location, or food or beverage vending machine shall upon the request of the Health Officer, permit access to all areas of every such food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market and machine location, as well as all parts of any food or beverage vending machine and shall permit inspection of access to, and the copying of any and all records relating to food and beverage sanitation of any said establishment, market, machine or location.

SECTION 8. Suspension, Revocation and Reinstatement of Permits:

(A) Suspension of Permit: Any permit issued under this Ordinance may be temporarily suspended by the Health Officer for any of the following reasons:

(1) Failure to meet any of the standards required by this Ordinance.

(2) Violation of any provision or provisions of this Ordinance.

(3) Interference with the Health Officer or any of his authorized representatives in performance of their duties.

A permit issued under the provisions of this Ordinance may be suspended temporarily by the Health Officer for any of the foregoing reasons. At the request of the operator, a hearing shall be afforded him within twenty-four (24) hours of the issuance of the written suspension order and prior to the effective date and hour of such suspension order. Notwithstanding any other provisions of this ordinance, whenever the Health Officer finds involuntary or other conditions, involving the operation of any food service establishment, mobile food service establishment, food market, temporary food market, or food or beverage machine operation which, in his opinion, constitutes an imminent health hazard, he may, without notice, or hearing, issue a written order to the operator, citing the existence of such condition and specifying corrective action to be taken and, in the event of suspected or known imminent health hazard, is bound to exist, require immediate discontinuance of operation. Such order shall be effective immediately, and shall apply only to the food service establishment, mobile food service establishment, food market, temporary food market, or food or beverage machine operation, or product involved. Any operator to whom such order is issued shall comply therewith, but upon petition to the Health Officer, shall be afforded a hearing as soon as possible. When necessary corrective action has been taken and on the request of the operator, the Health Officer shall make a reinspection to determine whether operations may be resumed.

(b) Revocation of Permit: Any permit issued hereunder may be revoked by the Health Officer for willful or continuous violation of any provision or provisions of this Ordinance provided, however, that no such revocation shall be ordered by the Health Officer except upon hearing and at least 10 days written notice to the permittee of the time, place and nature thereof. Such notice shall be served upon the permittee by leaving a copy at his usual place of business or by delivery by Certified Mail to such address. At such hearing, every person who is a party to such proceedings shall have the right to submit evidence and to cross-examine witnesses and to be represented by Counsel. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitious evidence shall be excluded. Upon the conclusion of such hearing,

Mail to such address. All persons appearing at such hearings shall have the right to submit evidence and to cross-examine witnesses and to be represented by Counsel. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitious evidence shall be excluded. Upon the conclusion of such hearing, the Health Officer shall make a final order determining the issue in the case, which order shall be final and conclusive upon all parties; provided, however, that the same may be reviewed as hereafter provided. Any person aggrieved by such an order of the Health Officer shall be entitled to a review of the same before the Board of Public Health by filing a written application therefor with the Secretary of the Board within 15 days after such order is issued.

Upon receipt of such application, said Board shall hear the matter de novo in open hearing upon at least 10 days notice of the time, place and purpose thereof which notice shall be issued by the Secretary of the Board to all persons affected. Such notice may be served upon the persons affected by leaving a copy at their usual place of business or by delivery by Certified United States Mail to such address. At such hearing the same rules of procedure shall apply as in the case of the hearing before the Health Officer, provided only, that upon written demand by the permittee affected, said Board shall cause the proceedings before it to be recorded by a stenographer or reporter employed for such purpose, and the same, together with all papers and documents filed therein, shall be reproduced by said Board in the form of a transcript, a copy of which shall be available to any party. The expense of such proceedings shall be charged to the party applying for the review, except that copies of transcripts shall be at the expense of the party obtaining the same. Said Board may require the party applying for a review to deposit with such application an amount determined by it as necessary to secure such expense. Said Board shall make written findings of the facts in the case and shall enter its final order or determination of the matter in writing in the permanent records of said Board.

SECTION 9. Revocation of Temporary Permit and Penalties For Continued Operation.
(a) UPON FAILURE OF ANY PERSON MAINTAINING OR OPERATING A TEMPORARY FOOD MARKET to comply with any order of the Health Officer, it shall be the duty of the Health Officer summarily to revoke the permit of such person and establishment and to forbid the further sale or serving of food therein. Upon the revocation of any permit by the Health Officer, the permit of the permittee shall automatically be considered revoked, null and void. The owner, manager of any person extensively in control or charge of such establishment and any other person who continues or allows to be continued the selling or serving of food in such temporary food service establishment, temporary food market the permit of which has been revoked, shall be subject to the penalties provided by Section 14 of this Ordinance.

SECTION 10. Prosecution of Violators.
Whenever the Health Officer determines that any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, vending operator, food handler or any other person, is in willful violation of any of the provisions of this Ordinance, the Health Officer shall furnish evidence of said willful violation to the City Attorney of the City of Fort Wayne, Indiana, who shall prosecute all persons violating said provisions of this Ordinance.

SECTION 11. Construction, Renovation and Alteration of Food Service Establishments, Temporary Food Service Establishments, Mobile Food Service Establishments, Temporary Food Markets, Food and Beverage Vending Machines, and Food Service Establishments, Temporary Food Service Establishments, mobile food service establishments, food markets, temporary food markets, all food and beverage vending machines which are hereafter constructed or renovated shall conform in their construction to the applicable requirements of Section 3 of this Ordinance. Properly prepared plans shall be submitted to the Health Officer for approval before work is begun. "All equipment installed in a food service establishment for use in the cleaning and bactericidal treatment of utensils and in the preparation, storing, handling or serving of food or drink for consumers shall be of a type conforming with the minimum standards of the National Sanitation Foundation, or better. Any directive by the Health Officer calling for installation or replacement of equipment, or structural change, in excess of one hundred dollars (\$100.00) cost, shall be given in writing with approval certified by the Fort Wayne-Alton County Health Officer personally. A person who receives such a directive may, within ten (10) days after receipt of such notice, appeal the directive to the Fort Wayne-Alton County Board of Public Health. If the decision of the Board of Public Health is adverse to the person he may appeal to the Circuit or Superior Court of Alton County in the manner now provided by law in other civil actions."

SECTION 12. Rules Regulations:
The Health Officer, individually, and not through an authorized representative, is hereby empowered to make rules and regulations to carry out, interpret and make effective the provisions of this Ordinance; provided that all such rules and regulations shall be recorded in a permanently bound book kept for such purpose and open to general public inspection, and provided further that no such regulation or rule shall be effective for a period longer than sixty (60) days unless formally ratified by the Board of Health.

SECTION 13. Severability Clause.
Should any section, paragraph, sentence, clause or phrase of this Ordinance be adjudged invalid or unconstitutional for any reason, the remainder of said Ordinance shall not be affected thereby.

SECTION 14. Penalty. Any person who willfully violates any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor. On conviction the violator shall be punished for the first offense by a fine of not more than five hundred dollars (\$500.00); for the second offense by a fine of not more than one thousand dollars (\$1,000.00); for a third and each subsequent offense by a fine of not more than one thousand dollars (\$1,000.00) which may be added imprisonment for any determinate period not exceeding ninety (90) days. Each and every violation of the provision of this Ordinance and each day that the same continues shall constitute a separate offense.

SECTION 15. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

SECTION 16. That this Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication hereof.

VIVIAN G. SCHMIDT, Clerk
Read the third time in full and on motion by V. Schmidt, seconded by Hings, and duly adopted, plan on its passage. Passed by the following vote:
Ayes: Eight; Nays: None; Absent: One; Nicksals
Date: 8-12-75
CHARLES W. WESTERMAN

Board of Accounts

Fort Wayne
ntal Unit)

County, Ind.

General Form No. 99 P (Rev 1967)

To NEWS-SENTINEL Dr.

FORT WAYNE, INDIANA

PUBLISHER'S CLAIM

(Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) number of equivalent lines

er of lines

985

er of lines

2

er of lines

987

number of lines in notice

GES

s. 1 columns wide equals 987 equivalent lines at .288¢ per line \$ 288.26

charge for notices containing rule or tabular work (50 per cent of above

1.50

extra proofs of publication (50 cents for each proof in excess of two)

\$ 288.76

TOTAL AMOUNT OF CLAIM

G COST

gle column 11 ems

Size of type 5 1/2 point

insertions. 2

Size of quad upon which type is cast 5 1/2

on and penalties of Ch. 89, Acts 1967.

foregoing account is just and correct, that the amount claimed is legally due, after allowing all just of the same has been paid.

V.E. Gerken

, 19 75

Title Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana

ALLEN County ss:

Personally appeared before me, a notary public in and for said county and state, the

V.E. Gerken

undesignated, who, being duly sworn, says that

S

Clerk

NEWS-SENTINEL

may be added imprisonment for any determinate period not exceeding ninety (90) days. Each and every violation of the provision of this Ordinance and each day that the same continues shall constitute a separate offense.

SECTION 15. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

SECTION 16. That this Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.

VIVIAN G. SCHMIDT,
Councilman

Read the third time in full and on motion by V. Schmidt, seconded by Hinga, and duly adopted, placed on its passage. Passed by the following vote.

Ayes: Eight; Burns, Hinga, Kraus, Moses, D. Schmidt, V. Schmidt, Stier, Talarico.

Nays: None
Absent: One, Nuckols
Date: 8-12-75

CHARLES W. WESTERMAN,
City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-23-75 on the 12th day of August, 1975.

ATTEST: (SEAL) Charles W. Westerman, City Clerk; James S. Stier, Presiding Officer.

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of August, 1975, at the hour of 10:00 o'clock A.M., E.S.T.

CHARLES W. WESTERMAN,
City Clerk

Approved and signed by me this 14th day of August, 1975, at the hour of 2:00 o'clock P.M., E.S.T.

IVAN A. LEBAMOFF,
Mayor

I, Charles W. Westerman, Clerk of the City of Fort Wayne, Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of General Ordinance No. G-23-75 passed by the Common Council on the 12th day of August, 1975, and that said Ordinance was duly signed and approved by the Mayor on the 14th day of August, 1975 and now remains on file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 14th day of August, 1975.

CHARLES W. WESTERMAN,
CITY CLERK

8-27-79

, 19 75

PUBLISHER'S AFFIDAVIT

State of Indiana
ALLEN County ss:

Personally appeared before me, a notary public in and for said county and state, the undersigned, V. E. Gerken

that She is Clerk of the

NEWS-SENTINEL

DAILY

a newspaper of general circulation printed and published in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for two

time 8, the dates of publication being as follows:

8/22-29/75

Subscribed and sworn to before me this 29th day of August 19 75.

Notary Public

My commission expires October 25, 1975

Notice is hereby given that on the 12th day of August, 1975, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. G-7407-45 (AS AMENDED) G-27-5 General Ordinance, to-wit:

Bill No. G-7407-45 (As Amended)

General Ordinance No. G-27-5

An Ordinance amending Articles I, II, III, IV, and V of Chapter 12 of the Municipal Code of the City of Fort Wayne, Indiana, 1944.

Be It ordained by the Common Council of the City of Fort Wayne, Indiana:

That Article I, II, III, IV, and V of Chapter 12 of the Municipal Code of the City of Fort Wayne, Indiana 1944 be repealed and in lieu of, and in substitution therefor be enacted the following, to-wit:

Section 3. Definitions. The following definitions shall apply in the interpretation and enforcement of this Ordinance.

(a) "Food Service Establishment." Said term shall include, but not necessarily be limited to, a restaurant, coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, soda fountain, commissary, drive-in restaurant or drink establishment, snack bar, food counter, dining room, food catering, industrial feeding establishment, private, public or nonprofit organization or institution routinely serving food, and any other eating or drinking establishment where food or drink is prepared, served or provided for human consumption with or without charge whether fixed or movable.

(b) "Temporary Food Service Establishment." Said term shall mean any food service facility operating for a period of time not in excess of two (2) consecutive calendar weeks, in connection with a fair, carnival, circus, public exhibition, or any other gathering at any impermanent location, whether or not the facility is fixed or movable.

(c) "Mobile Food Service Establishment." Said term shall mean any food-serving facility capable of being readily moved from location to location, one without a fixed location.

(d) "Food Market." Said term shall include, but not necessarily be limited to, grocery, meat market, poultry market, fish market, fresh fruit and vegetable market, delicatessen, confectionery, candy kitchen, hot store, retail bakery store, or any other establishment, whether fixed or movable, where food, intended for human consumption off the premises, is manufactured, produced, stored, prepared, handled, sold or offered for sale at retail or wholesale. Provided, however, that the provisions of this ordinance shall not include meat or poultry slaughterhouses.

(e) "Temporary food Market." Said term shall mean any enclosure, stall or other facility, whether fixed or mobile, operating on a seasonal basis for one or more days and not to exceed six (6) consecutive calendar months, where only fresh fruits and vegetables intended for human consumption off the premises are offered for sale at retail or wholesale.

(f) "Food or Beverage Vending Machine." Said term shall mean any self-service device offered for public use which, upon insertion of paper money, coins or tokens, or by other similar means, dispenses unit servings of food or beverages, either in bulk or in package.

(g) "Machine Location." Said term shall include, but not necessarily be limited to, any room, enclosure, space or area where one or more food or beverage vending machines are installed and operated.

(h) "Commissary." Said term shall include, but not necessarily be limited to, any place in which food, beverages, food or beverage ingredients, containers, or supplies are kept, handled, prepared or stored for the purpose of directly supplying food or beverage vending machines.

(i) "Food." Said term shall include, but not necessarily be limited to, all raw, cooked or processed edible substances which may be used in whole or in part for human consumption, whether solid or liquid, packaged or unpackaged, confectionery, or condiment, whether simple, mixed or compound, and all substances and ingredients used in the preparation thereof or which become components thereof.

(j) "Readily Perishable Food." The term "readily perishable food" shall mean any food, as defined in this section, which consists in whole or in part of milk, milk products, eggs, meat, fish, poultry, or other food capable of supporting rapid and progressive growth of microorganisms which can cause infection or intoxication provided, however, products in hermetically sealed containers processed by heat or other methods approved by the Health Officer to prevent spoilage, and dehydrated, dry or powdered products so low in moisture content as to preclude development of microorganisms are excluded from the terms of this definition.

(k) "Utensil." Said term shall mean all containers or any equipment of any kind or nature, included, but not necessarily limited to, any kitchenware, tableware, glassware, or cutlery, with which food may come into contact during storage, preparation, serving, or eating, or any and all apparatus, machinery or tools which may be used for the cleaning of said containers or equipment.

(l) "Vending Operator." Said term shall include, but not necessarily be limited to, any person who by contract, agreement, or ownership, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more vending machines.

(m) "Food handler." Said term shall include, but not necessarily be limited to, any person who may come into contact with food during exposure by sale, processing, preparation, packaging, serving, or who comes in contact with any utensil or equipment of any kind, during any said exposure, or who is employed in a room or rooms in which food is being processed, prepared, packaged, served, or sold.

(n) "Health Officer." Said term shall mean the Director of Public Health of the Fort Wayne, Allen County Department of Public Health in Allen County, Indiana, or his authorized representative.

(o) "Board of Public Health." Said term shall mean the Board Membership of the Fort Wayne, Allen County Department of Public Health of Fort Wayne, Allen County, Indiana.

(p) "Department of Public Health." Said term shall mean the Fort Wayne, Allen County Department of Public Health of Fort Wayne, Allen County, Indiana.

(q) "Person." Said term shall include, but not necessarily be limited to, a corporation, firm, partnership, proprietorship, association, business organization, or any other group acting as a unit, as well as an individual, trust or estate, or the agent or legal representative thereof.

Section 2. (a) Permit Requirements.

It shall be unlawful for any person to operate a food service establishment, a temporary food service establishment, a mobile food service establishment, a food market, a temporary food market, or to act, whether actually or ostensibly, as a vending operator in Allen County, Indiana, who does not possess a valid permit for each such operation from the Health Officer; provided however, the provisions of this ordinance shall not apply to fruit and vegetable stands maintained and operated by a person who sells direct to consumers, fresh fruits or vegetables, obtained therefrom, grown and sold on land

Section 5. (a) Permit Requirements. It shall be unlawful for any person to operate a food service establishment, a temporary food service establishment, a mobile food service establishment, a food market, a temporary food market, or to act, whether actually or ostensibly, as a vending operator in Allen County, Indiana, who does not possess a valid permit for each such operation from the Health Officer; provided however, the provisions of this ordinance shall not apply to fruit and vegetable stands maintained and operated by a person who sells direct to consumers, fresh fruits or vegetables, obtained therefrom, grown and sold on land owned or controlled by him. Such permit shall be posted in a conspicuous place in each such food service establishment, temporary food service establishment, food market or temporary food market. With respect to mobile food service establishment, a permit number of size and style approved by the Health Officer, but in not less than one half (1/2) inch, bold-faced, capital lettered print, shall be conspicuously displayed on each vehicle. Any vending operator's permit number, of a size and style approved by the Health Officer, shall be conspicuously displayed on each vending machine operated, maintained or supplied by such operator.

(1) Only persons who comply with the applicable provisions of this Ordinance shall be entitled to receive and retain such a permit.

(2) The permit for a food service establishment, mobile food service establishment, food market and vending operator shall be for a term of one year beginning upon the date of issue and to be renewed annually on the anniversary date thereof. The permit for a temporary food service establishment shall be for a term not to exceed two (2) consecutive calendar weeks. The permit for a temporary food market shall be for a term not to exceed six (6) consecutive calendar months on a seasonal basis. Any permit issued by the Health Officer shall contain the name and address of the person to whom the permit is granted, the address of the premises for which the same is issued, and such other pertinent data as may be required by the Health Officer.

(3) A separate permit shall be required for each food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, and vending operator.

(4) A permit shall be issued subsequent to application and inspection and upon determination by the Health Officer, that the applicant food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or vending operator has complied with all the applicable provisions of this Ordinance, and has tendered the appropriate permit fee hereinafter specified.

(5) No permit or renewal thereof shall be denied or revoked on arbitrary or capricious grounds.

(6) Application for a food service establishment, temporary food service establishment, mobile food service establishment, food market and temporary food market shall be made to the Health Officer on forms provided by the Health Officer. Such forms shall show, upon completion and among other information which may be required by the Health Officer, the legal name of the applicant person and address, the name under which said person intends to operate, the address of the establishment, and the number of food handlers employed therein, and the report of the Health Officer of the initial inspection of the applicant.

(7) Application for a vending operator permit shall be made to the Health Officer on forms provided by the Health Officer for such purpose. Such forms shall show, when completed and among other information which may be required by the Health Officer, the applicant person's full name, residence and post office address, and whether such applicant is an individual, firm, corporation or partnership and in said latter instance, the names of its partners and their respective addresses shall be included. In addition, said application shall specify the location of any Commissary or Commissaries, the number and type of each to be used, average vending machine and any and all other locations maintained by the applicant where supplies are kept or where vending machines are required or renovated, and the type and form of the food to be dispensed through vending machines of the applicant. Said application shall include the signature of the applicant or applicants and the report of the Health Officer of the initial inspection of the applicant. Upon approval by the Health Officer of the premises described in the application the Health Officer shall issue the applicant person a permit.

(b) "Permit not Transferable." No permit issued to any person under this Ordinance shall be transferable.

(b) "Permit Fees." Every applicant for a permit to operate a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or as a vending operator shall tender to the Treasurer of Allen County a fee or fees and said fee or fees shall be deposited into the City County Health Fund for each such operation in accordance with the schedule of fees in the immediately following paragraph.

(c) "Schedule of Fees." Permit fees shall be paid annually, or for such lesser period or hereafter specified in accordance with the following classifications.

(1) Food Service Establishments, Temporary Food Service Establishments, Temporary Food Markets.

- (a) 1 thru 5 employees, \$20.00
- (b) 6 thru 9 employees, \$30.00
- (c) 10 or more employees, \$70.00

(d) Temporary food service establishments, each day's operation, \$5.00

(e) Temporary food market, \$10.00

(f) All other food service establishments not otherwise provided for above or hereafter, \$50.00

(2) Food Market: Square Footage of Floor Area:

- (a) Under 2,000 square feet, \$25.00
- (b) 2,000 to 7,999 square feet, \$30.00
- (c) 8,000 to 9,999 square feet, \$50.00
- (d) 10,000 square feet and over, \$70.00

(3) Mobile Food Service Establishment: Gross Weight of Mobile Food Establishment: (a) Under 1,000 pounds \$30.00 (b) Over 1,000 pounds \$50.00

(c) Vending Operator: (a) One to not more than ten food or beverage vending machines, per machine \$15.00. (b) Eleven to not more than twenty-five machines \$25.00. (c) Twenty-six to not more than fifty machines \$100.00. (d) Fifty-one to not more than one hundred machines \$150.00. (e) One Hundred and one to not more than three hundred machines \$200.00. (f) Two hundred and one but not more than three hundred machines \$250.00 (g) Three hundred and one or more machines \$300.00.

(d) "Permit Fee Exemption." The permit fee provisions of this Ordinance shall not apply to food service establishments, temporary food service establishments, mobile food service establishments, temporary food markets operated by, or vending operators which are, religious, educational, and charitable organizations, unless they provide food services to persons other than members, guests or students on a regular basis.

(e) Establishments which shall sell or offer for sale only pre-packaged confections such as candy, chewing gum, nut meats, potato chips, pretzels, popcorn, and soft drink beverages, or food dispensed from a coin operated vending

establishments, temporary food markets operated by vendors, vending operators which are religious, educational, and charitable organizations, unless they provide food services to persons other than members, guests or students on a regular basis.

(e) Establishments which shall sell or offer for sale only pre-packaged confections such as candy, chewing gum, nut meats, potato chips, pretzels, popcorn, and soft drink beverages, or food dispensed from a coin operated vending machine shall be exempt from the provisions of Section 2 herein regarding the necessity for obtaining a permit from the Health Officer, but not Section 3, hereinafter set forth. Vending machines which dispense only pre-packaged, probiotic, non-readily perishable food and beverages shall be exempt from the provisions of this Ordinance.

SECTION 3. Minimum Sanitary Requirements for Food Service Establishments, Food Markets, Temporary Food Markets, Vending Operators and Food and Beverage Vending Machines. All food service establishments, temporary food service establishments, food markets, vending operators, food and beverage vending machines shall comply with the minimum sanitary requirements specified by the Indiana State Board of Health as now provided in its Regulations H.F.D. 17, H.F.D. 19 and H.F.D. 21 or as said Regulations may be hereafter changed or amended by addition, revision or substitution, such Regulations and any changes and amendments hereto which may be hereafter adopted or promulgated are by reference incorporated herein and made part hereof, two copies of each of which are on file in the office of the Department of Public Health for public inspection.

(a) Minimum Sanitary Requirements for Temporary Food Markets.

(1) All temporary food markets shall comply with the applicable provisions of this Ordinance.

(2) Every temporary food market shall be located in clean surroundings and be kept in a clean sanitary condition.

(3) All equipment and utensils used in the storing and display of fresh fruits and vegetables shall be kept clean.

(4) Only fresh fruits and vegetables that are clean, wholesome, free from spoilage and adulteration shall be sold.

(5) All fruits and vegetables shall be stored or displayed at least thirty (30) inches above the floor level and in such manner as to protect food from contamination by splash, foot traffic, dust, animals or other means.

(6) The floor area of all temporary fresh fruit and vegetable markets where foods are displayed or stored shall have smooth floors of impervious construction as to be easily cleaned and maintained in a sanitary condition. Provided, however, that wood floors or other impervious construction that is smooth and easily cleanable shall be acceptable for mobile fresh fruit and vegetable vending vehicles.

(7) Garbage and refuse shall be kept in tightly covered, watertight containers until removed and shall be disposed of daily in a place and manner that does not create a public health hazard.

(8) Toilet and handwashing facilities shall be provided for the use of employees within a reasonable distance of the employees work area. Provided, however, that mobile fresh fruit and vegetable vending vehicles shall not be required to have toilet and handwashing facilities on the vehicle.

(9) Liquid wastes shall be disposed of in a public sewer, or in the absence of a public sewer, by a method which complies with the standards and regulations of the Indiana State Board of Health and Fort Wayne-Alien County Board of Health.

(10) All plumbing shall comply with the rules and regulations of the Administration Building Council of Indiana.

(11) All employees shall wear clean outer garments and shall keep their hands and fingernails clean at all times while engaged in the handling of food, utensils, or equipment. Employees shall not expectorate or use tobacco in any form within the establishment.

(12) The Health Officer may augment such requirements when he may deem it necessary to prevent a condition

which may constitute a public health hazard.

SECTION 4. Sale, Examination, and Condemnation of Unwholesome, Adulterated or Misbranded Food or Beverage. It shall be unlawful for any person to sell through a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, food or beverage vending machine within Allen County, Indiana, any food or beverage or substances which is unwholesome, adulterated or misbranded. Provided, however, that the term "misbranded" as used in this Ordinance does not mean a meal item, prepared to an individual recipe, that is denominated by commonly accepted menu terminology. Samples of food or beverage and other substances may be taken and examined by the Health Officer as often as he may deem necessary to determine freedom from unwholesomeness, adulteration or misbranding. The Health Officer may condemn and forbid the sale of or cause to be removed or destroyed, any food or beverage which is unwholesome, adulterated or misbranded. Whenever the Health Officer finds or has probable cause to believe, that any food or beverage is adulterated and/or misbranded, he shall use the public embargo as outlined in the Indiana Food, Drugs and Cosmetic Act, Article 5, Indiana Public Health Code, Chapter 157, Acts 1949, Enacted March 3, 1949.

SECTION 5. Health and Disease Control.

(a) **Infected Persons Prohibited:** No person while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, a cold, diarrhea, gastrointestinal upsets, or a respiratory infection shall work in any area of a food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, or service or maintain food or beverage vending machines in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other individuals; and no person known or believed to be affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, or vending operation has reason to believe that any employee has contacted any disease in a communicable form or has become a carrier of such disease, he shall notify the Health Officer immediately.

(b) **Procedure When Disease Suspected:** When the Health Officer has probable cause to determine that there exists a reasonable possibility of the transmission of disease from any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market or a food or beverage vending machine, the Health Officer may require any or all of the following measures:

(1) The immediate exclusion of all persons determined to be possible carriers or transmitters of disease from any and all food service establishments, temporary food service establishments, mobile food service establishments, food markets, temporary food markets, food or beverage vending

age vending machine may require any or all of the following measures:

(1) The Immediate exclusion of all persons determined to be possible carriers or transmitters of disease from any and all food service establishments, temporary food service establishments, mobile food service establishments, food markets, temporary food markets, food or beverage vending machine locations.

(2) The immediate closing of the affected food service establishment; temporary food service establishment; mobile food service establishment; food market; temporary food market; food and beverage vending machine location until no further danger of the presence of disease exists in the opinion of the Health Officer.

(3) Medical examinations of any person determined to be a possible carrier or transmitter of disease and said person's associates to such extent as may be deemed necessary to satisfy the Health Officer that a determination of the presence or absence of disease can be made to a reasonable medical certainty.

SECTION 6. Food Handler Education. Every food handler or person who is employed or about to be employed as a food handler may be required to attend a food service educational program from time to time at the City-County Department of Public Health.

SECTION 7. Inspection of Food Service Establishments, Mobile Food Service Establishments, Food Markets, Temporary Food Markets, Food or Beverage Vending Machines.

(a) Frequency of Inspection: At least once each six months, or more frequently if determined necessary by the Health Officer, the Health Officer shall inspect each food service establishment, mobile food service establishment, food market, temporary food market, food or beverage vending machine for which a permit is required under the provisions of this Ordinance.

(b) Inspection of Temporary Food Service Establishment: Frequency of Inspection: At least once in each forty-eight hour period the Health Officer shall inspect each temporary food service establishment for which a permit is required under the provisions of this Ordinance.

(c) Procedure When Violations Noted: If during the inspection of any food service establishment, mobile food service establishment, food market, food or beverage vending machine operation the Health Officer discovers the violation of any of the sanitary requirements in Section 3 of this Ordinance, he shall issue a written order listing such violations to the owner or manager of. In his absence, any other person ostensibly in charge, and fixing a time within which the said operator of said food service establishment, mobile food service establishment, food market, food or beverage vending machine shall abate and remedy such violations. A copy of the written order shall be filed in the records of the Department of Public Health. If during the inspection of any temporary food service establishment or temporary food market the Health Officer discovers the violation of any of the sanitary requirements in Section 3 of this Ordinance, he shall order the immediate correction of this violation.

(d) Authority to Inspect and to Copy Records: The owner, manager or other person ostensibly in charge of any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, machine location, or food or beverage vending machine shall upon the request of the Health Officer, permit access to all areas of every such food service establishment, temporary food service establishment, food market, mobile food service establishment, food or beverage vending machine and machine location, as well as all parts of any food or beverage vending machine and shall permit inspection of, access to, and the copying of any and all records relating to food and beverage sanitation of any said establishment, market, machine or location.

SECTION 8. Suspension, Revocation and Reinstatement of Permits:

(A) Suspension of Permit: Any permit issued under this Ordinance may be temporarily suspended by the Health Officer for any of the following reasons:

(1) Failure to meet any of the standards required by this Ordinance.

(2) Violation of any provision or provisions of this Ordinance.

(3) Interference with the Health Officer or any of his authorized representatives in performance of their duties.

A permit issued under the provisions of this Ordinance may be suspended temporarily by the Health Officer for any of the foregoing reasons. (A) At the request of the operator, a hearing shall be afforded him within twenty-four (24) hours of the issuance of the written suspension order and prior to the effective date and hour of such suspension order. Notwithstanding any other provisions of this ordinance, whenever the Health Officer finds insanitary or other conditions involving the operation of any food service establishment, mobile food service establishment, food market, temporary food market, or food or beverage vending machine operation which, in his opinion, constitutes an imminent health hazard, he may, without notice or hearing, issue a written order to the operator, citing the existence of such condition and specifying corrective action to be taken and, in the event of suspected or known imminent health hazard is found to exist, require immediate discontinuance of operation. Such order shall be effective immediately, and shall apply only to the food service establishment, mobile food service establishment, food market, temporary food market, or food or beverage machine operation, or product involved.

Any operator to whom such order is issued shall comply therewith, but upon petition to the Health Officer, shall be afforded a hearing as soon as possible. When necessary corrective action has been taken and on the request of the operator, the Health Officer shall make a reinspection to determine whether operations may be resumed.

(B) Revocation of Permit: Any permit issued hereunder may be revoked by the Health Officer for willful or conscious violation of any provision or provisions of this Ordinance; provided, however, that no such revocation shall be ordered by the Health Officer except upon hearing and at least 10 days written notice to the permittee of the time, place and nature thereof. Such notice shall be served upon the permittee by leaving a copy at his usual place of business or by delivery by Certified Mail to such address. At such hearing, every person who is a party to such proceedings shall have the right to submit evidence and to cross-examine witnesses and to be represented by Counsel and to be heard in an informal manner, but irrelevant, immaterial or unduly repetitious evidence shall be excluded. Upon the conclusion of such hearing, the Health Officer shall make a final order determining the issue in the case, which order shall be final and conclusive upon all parties provided, however, that the same may be reviewed as hereafter provided. Any person aggrieved by such an order of the Health Officer shall be entitled to a review of the same before the Board of Public Health by filing a written application thereto with the Secretary of the Board within 15 days after such order is issued.

Upon receipt of such application, said Board shall hear the matter de novo in an open hearing upon at least 10 days notice of the time, place and purpose thereof which notice shall be issued by the Secretary of the Board to all persons

for the review, except that copies of the report shall be furnished to the party obtaining the permit. Said Board may require the party applying for a review to deposit with such application an amount determined by it as necessary to secure such expense. Said Board shall make written findings of the facts in the case and shall enter its final order or determination of the matter in writing in the permanent records of said Board.

SECTION 9. Revocation of Temporary Permit and Penalties For Continued Operation:

(a) UPON FAILURE OR OPERATING A TEMPORARY FOOD market to comply with any order of the Health Officer, it shall be the duty of the Health Officer summarily to revoke the permit of such person and establishment and to forbid the further sale or serving of food thereon. Upon the revocation of any permit by the Health Officer, the permit of the permittee shall automatically be considered revoked, null and void. The owner, manager of any person exclusively in control or charge of such establishment and any other person who continues or allows to be continued the selling or serving of food in such temporary food service establishment, temporary food market the permit of which has been revoked, shall be subject to the penalties provided by Section 14 of this Ordinance.

SECTION 10. Prosecution of Violators. Whenever the Health Officer determines that any food service establishment, temporary food service establishment, mobile food service establishment, food market, temporary food market, vending operator, food handler or any other person, is in willful violation of any of the provisions of this Ordinance, the Health Officer shall furnish evidence of said willful violation to the City Attorney of the City of Fort Wayne, Indiana, who shall prosecute all persons violating said provisions of this Ordinance.

SECTION 11. Construction, Renovation and Alteration of Food Service Establishments, Temporary Food Service Establishments, Food Markets, Temporary Food Markets, Food and Beverage Vending Machines, Food Service Establishments, temporary food service establishments, mobile food service establishments, food markets, temporary food markets, all food and beverage vending machines which are hereafter constructed or renovated shall conform in their construction to the applicable requirements of Section 3 of this Ordinance. Properly prepared plans shall be submitted to the Health Officer for approval before work is begun. "All equipment installed in a food service establishment for use in the cleaning and bactericidal treatment of utensils and in the preparation, storing, handling or serving of food or drink for consumers shall be of a type conforming with the minimum standard of the National Sanitation Foundation, or better. Any directive by the Health Officer calling for installation or replacement of equipment, or structural change, in excess of one hundred dollars (\$100.00) cost, shall be given in writing with approval certified by the Fort Wayne-Alien County Health Officer personally. A person who receives such a directive may, within ten (10) days after receipt of such notice, appeal the directive to the Fort Wayne-Alien County Board of Public Health. If the decision of the Board of Public Health is adverse to the person, he may appeal to the Circuit or Superior Court of Allen County in the manner now provided by law in other civil actions."

SECTION 12. Rules Regulations: The Health Officer, individually, and not through an authorized representative, is hereby empowered to make rules and regulations to carry out, interpret and make effective the provisions of this Ordinance; provided that all such rules and regulations shall be recorded in a permanently bound book kept for such purpose and open to general public inspection, and provided further that no such regulation or rule shall be effective for a period longer than sixty (60) days unless formally ratified by the Board of Health.

SECTION 13. Severability Clause. Should any section, paragraph, sentence, clause or phrase of this Ordinance be adjudged invalid or unconstitutional for any reason, the remainder of said Ordinance shall not be affected thereby.

SECTION 14. Penalty. Any person who willfully violates any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor. On conviction the violator shall be punished for the first offense by a fine of not more than five hundred dollars (\$500.00); for the second offense by a fine of not more than one thousand dollars (\$1,000.00); and for a third and each subsequent offense by a fine of not more than one thousand dollars (\$1,000.00) to which may be added imprisonment for any determinate period not exceeding ninety (90) days. Each and every violation of the provision of this Ordinance and each day that the same continues shall constitute a separate offense.

SECTION 15. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

SECTION 16. That this Ordinance shall be in full force and effect from and after its passage, approval by the Mayor and legal publication thereof.

VIVIAN G. SCHMIDT, Councilman

Read the third time in full and on motion by V. Schmidt, seconded by Hinga, and duly adopted, placed on its passage. Passed by the following roll call: Ayes: Eight; Burns, Hinga, Kraus, Mates, D. Schmidt, V. Schmidt, Slier, Talarico.

MAYOR: None
Absent: One, Nuckols
Date: 8-12-75

CHARLES W. WESTERMAN, City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, on General Ordinance No. 2-23-75 on the 12th day of August, 1975.

ATTEST: (SEAL) CHARLES W. WESTERMAN, City Clerk; James S. Slier, Presiding Officer.

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of August, 1975, at the hour of 10:00 o'clock A.M., E.S.T.

CHARLES W. WESTERMAN, City Clerk

Approved and signed by me this 13th day of August, 1975, at the hour of 2:00 o'clock P.M., E.S.T.

IVAN A. LEBAMOFF, Mayor

I, Charles W. Westerman, Clerk of the City of Fort Wayne, Indiana, do hereby certify that the above and foregoing is a full, true and complete copy of General Ordinance No. 2-23-75 passed by the Common Council on the 12th day of August, 1975, and that said Ordinance was duly signed and approved by the Mayor on the 13th day of August, 1975 and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Fort Wayne, Indiana, this 14th day of August, 1975.

CHARLES W. WESTERMAN, CITY CLERK

8/22/75

ate Board of Accounts

of Fort Wayne
mental Unit)

County, Ind.

PUBLISHER'S CLAIM

ter (Must not exceed two actual lines, neither of which shall total more than four solid lines of the type in which the body of the advertisement is set) number of equivalent lines

number of lines

985

number of lines

2

number of lines

987

total number of lines in notice

ARGES

nes, 1 columns wide equals 987 equivalent lines at 2884

\$ 284.26

charge for notices containing rule or tabular work (50 per cent of above

extra proofs of publication (50 cents for each proof in excess of two)

1.50

TOTAL AMOUNT OF CLAIM

\$ 285.76

NG COST

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Size of type 5 1/2 point

insertions 2

Size of quad upon which type is cast 5 1/2

ion and penalties of Ch. 89, Acts 1967,

te foregoing account is just and correct, that the amount claimed is legally due, after allowing all just of the same has been paid.

Arvilla De Wald

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Title CLERK

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State of Indiana
Allen County } as:

Personally appeared before me, a notary public in and for said county and state, the undersigned ARVILLA DERWALD who, being duly sworn, says that she is CLERK

JOURNAL-GAZETTE

a DAILY newspaper of general circulation printed and published in the English language in the city of FORT WAYNE, INDIANA

in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2 time 5, the dates of publication being as follows: 8/22-29/75

Subscribed and sworn to before me this 29th day of August 19 75

Notary Public

My commission expires October 25, 1975

